

1 THE STATE OF OHIO, )  
2 ) SS: JACKSON, J.  
3 COUNTY OF CUYAHOGA.)

4 IN THE COURT OF COMMON PLEAS  
5 CRIMINAL DIVISION

6 THE STATE OF OHIO, )  
7 Plaintiff, )  
8 -v- ) Case No. CR-605515  
9 ANDREW JAMES CARR, )  
10 Defendant. )

11 - - - -  
12 DEFENDANT'S TRANSCRIPT OF PROCEEDINGS  
13 - - - -

14 APPEARANCES:

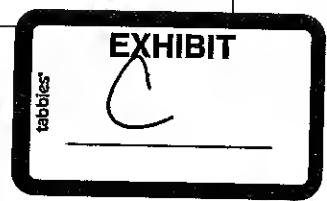
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16 Prosecuting Attorney,  
17 by: JOHN KIRKLAND, ESQ., Assistant County  
18 Prosecutor,

19 On behalf of the Plaintiff;

20 JOSEPH PATITUCE, ESQ.,

21 On behalf of the Defendant.

22  
23 Mary E. Schuler, RMR  
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25 Official Court Reporter  
Cuyahoga County, Ohio



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18 - - - - -  
19

20 BE IT REMEMBERED, that at the September  
21 2016 term of said Court, to-wit, commencing on  
22 Tuesday, October 11, 2016, this cause came on to  
23 be heard before the Honorable Michael Jackson, in  
24 Courtroom No. 15-D, Courts Tower, Justice Center,  
25 Cleveland, Ohio, upon the indictment filed  
heretofore.  
26 - - - - -  
27 - - - - -  
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1 TUESDAY AFTERNOON SESSION, OCTOBER 11, 2016

2 MOTION TO SUPPRESS

3 THE COURT: We are here this  
4 afternoon in Case Number 605515, State of Ohio vs.  
5 Andrew Carr. Mr. Carr is present in the courtroom  
6 today. He's represented by Attorney Joe Patituce.  
7 And representing the State of Ohio, Assistant  
8 County Prosecutor John Kirkland.

9 We are here today on a motion to suppress  
10 filed by counsel for Mr. Carr. This is a  
11 continuation of a prior hearing.

12 Mr. Kirkland, remind me where we are in  
13 the process of this hearing.

14 MR. KIRKLAND: Actually, your Honor,  
15 we had not taken any testimony in the prior  
16 hearing at all, your Honor. It had been continued  
17 to this date.

18 There was an issue with a motion to quash  
19 and then availability of the detective who drafted  
20 the search warrant; he was in another matter, your  
21 Honor; on that date he was in trial in another  
22 case in another courtroom, so we just continued it  
23 to this date, your Honor.

24 THE COURT: Now, I recall there was a  
25 subpoena issued or some sort of notice of

1 appearance for Judge Astrab; is that correct,  
2  
3 Mr. Patituce?

4 MR. PATITUCE: Your Honor, there was  
5 a subpoena that was issued in the ordinary course  
6 that subpoenas are issued through the clerk's  
7 office. It's my understanding that the Cuyahoga  
8 County Sheriff's Office served that subpoena on  
9 some -- a floor either bailiff or deputy.

10 Since we don't personally tell the  
11 sheriffs how to serve it or where to serve it, I  
12 believe they served it on Judge Astrab.

13 He got notice of it, called my office  
14 less than pleased that he had received a subpoena,  
15 and following that I believe the Cuyahoga County  
16 Prosecutor's Office through Prosecutor Graham, who  
17 is here in the courtroom, has entered her  
18 appearance and filed a motion to quash.

19 THE COURT: And is it your intention  
20 to pursue that subpoena and require Mr. -- or  
21 Judge Astrab to be in the courtroom subject to  
22 testimony?

23 MR. PATITUCE: Your Honor -- the  
24 short answer is yes. And I had actually sought  
25 through the other Cuyahoga County prosecutor from  
the criminal division certain stipulations that

1           actually relate to matters of public knowledge  
2           such as -- the basis of why I wanted to call him,  
3           stipulating that Judge Astrab was the victim of  
4           the Heartless Felons; that Detective Johnson was  
5           the detective who did -- stipulations that are  
6           public knowledge, nothing that gets into impugning  
7           Judge Astrab's integrity or honesty or anything  
8           like that.

9           Unfortunately, the prosecutor, criminal  
10          division, has refused to enter into those  
11          stipulations, so, unfortunately, I'm left with a  
12          situation where I offered up in good faith  
13          stipulations that I don't believe can be  
14          contested; they're a matter of public knowledge,  
15          but to get them in the record properly before you,  
16          your Honor, I believe I think I'm left with no  
17          alternative than to ask Judge Astrab to testify to  
18          what we know to be public record.

19           I would like to avoid it, but to get it  
20          in and to protect my client, if the criminal  
21          division won't stipulate, I mean I understand the  
22          civil division here is -- I have one division  
23          saying they aren't going to stipulate and the  
24          other division saying, We don't want him to  
25          testify.

1                   Under the second prong of Franks, I can  
2 raise an argument that Judge Astrab was not  
3 neutral and detached based on what I think is  
4 normal human emotion having yourself or your  
5 family threatened.

6                   So I'm left with a, sort of a Catch-22,  
7 your Honor. I would like to stipulate in good  
8 faith to what's playing, but at the same time, one  
9 division says, no, it won't stipulate and the  
10 other says --

11                  THE COURT: I understand your point.  
12 But further on the point itself, I take it then  
13 your primary thrust of questioning for Judge  
14 Astrab would be about this public information  
15 about the case that he had had previously and the  
16 impact you assert that case may have had on him  
17 vis-a-vis signing off on this search warrant when  
18 presented to him for examination and analysis and  
19 eventually executing.

20                  MR. PATITUCE: Yes.

21                  THE COURT: So, you're not going to be  
22 asking questions about his thought processes and  
23 procedure and events that took place in executing  
24 the search warrant in this case.

25                  MR. PATITUCE: No intention to ask

1 any question relating to that.

2 THE COURT: All right. And is it  
3 Ms. Graham?

4 MS. GRAHAM: Yes.

5 THE COURT: You're here on behalf of  
6 the prosecutor's office civil division on behalf  
7 of Judge Astrab.

8 MS. GRAHAM: Yes, I'm here on behalf  
9 of Judge Astrab. Our motion to quash is based on  
10 two factors, first the procedural issue that he  
11 was not properly served.

12 Second, beyond that, even if he had been  
13 properly served that there's not a sufficient  
14 basis for the Court calling Judge Astrab in this  
15 case.

16 Mr. Patituce said the things that he  
17 wanted to ask him about are public knowledge.  
18 They can be obtained from other sources. So there  
19 is no need to call Judge Astrab to testify to  
20 those things.

21 The standard is a high burden for a  
22 defendant to have a judicial officer testify in a  
23 case and that would be when the source -- when the  
24 information can't be obtained from any other  
25 source. And here he's already said that it's

1                   public knowledge and it can be obtained from other  
2                   sources so that would not be a reason to put Judge  
3                   Astrab on the stand.

4                   THE COURT:     And have you thought  
5                   through as to what those sources might be?

6                   MS. GRAHAM:    If he's saying there was  
7                   a case in which Judge Astrab was involved in, he  
8                   could present a public record of that case; he  
9                   could ask the detective about it.  He's saying the  
10                  detective has knowledge of this.  That's another  
11                  witness that can testify to these very issues that  
12                  he wants to ask Judge Astrab about.

13                  MR. KIRKLAND:    Your Honor, I would  
14                  note that Detective Johnson here was the  
15                  investigating detective I believe in the case that  
16                  Mr. Patituce is referring to and to that extent he  
17                  might be able to answer some of the questions  
18                  regarding that case that involved Judge Astrab, et  
19                  cetera.  And obviously he's here.

20                  MS. GRAHAM:     And further, your Honor,  
21                  the standard, you know, is that -- to show that a  
22                  judge wholly abandoned his judicial role here.  
23                  And there's been simply no argument of that, that  
24                  Judge Astrab abandoned the judicial role.  His  
25                  only role in this was simply signing the warrant

1 so that's inherently his judicial role and he  
2 shouldn't be on the stand to be questioned about  
3 that.

4 THE COURT: Mr. Patituce, your  
5 thoughts concerning Ms. Graham's arguments?

6 MR. PATITUCE: The argument regarding  
7 the wholly abandonment, the whole abandonment of  
8 the judicial role is misplaced in this case.

9 This isn't a case where -- the case that  
10 the prosecutor is referring to would be if I was  
11 accusing you, your Honor, of abandoning your  
12 judicial role; in other words, if you went out and  
13 conducted your own investigation or you ordered  
14 the police to do certain things.

15 This isn't necessarily a Leon case. This  
16 is a Franks case. This is whether or not the  
17 magistrate objectively was neutral and detached.  
18 This isn't an abandonment case under Leon. This  
19 is a Franks case where it's neutral and detached.

20 And as it relates to the argument about  
21 whether or not I can obtain some of this  
22 information from the detective, I obviously could  
23 obtain some of this from the detective, but the  
24 best evidence rule is the person who was  
25 threatened. He was the victim of the Heartless

1 Felons. I believe he has information. He's  
2 talked about it, for instance, on Facebook and I  
3 am entitled -- my client actually is the one who  
4 is entitled to have Judge Astrab testify to the  
5 material that is outside of his deliberative  
6 process.

7 I'm not asking him to answer any  
8 questions about what he considered to be relevant,  
9 what he considered to be important; if he believed  
10 there was probable cause. I'm not seeking to ask  
11 him any questions about that. And as such he  
12 should be treated as any other witness that the  
13 defense is seeking to subpoena.

14 As the Court knows, the defendant has the  
15 fundamental right to compulsory process. That  
16 is -- I respect judges; I have a lot respect for  
17 Judge Astrab, but compulsory process applies to  
18 judges. I'm not asking him to testify about his  
19 role as a judge -- I'm asking him to testify  
20 about -- his role as a judge deliberating on what  
21 happened here -- I'm asking him to testify. I'm  
22 seeking an order for him to testify as to the  
23 activities regarding the Heartless Felons that he  
24 was personally involved with.

25 THE COURT: But you -- I would assume

1 at some point in time you're going to try to make  
2 the connection between what you believe might be  
3 the case, that he was, to use your term and  
4 characterizing Franks, that he was one, either not  
5 neutral or not detached, or both, and as a result  
6 of that he should have what, with regard to this  
7 request for a search warrant?

8 MR. PATITUCE: He should have recused  
9 himself, your Honor.

10 THE COURT: So there is a connection  
11 with this case and the search warrant but it's not  
12 to his conduct in determining whether it was  
13 probable cause to grant it, it's just that he was  
14 in a situation where you believe he was not  
15 neutral and detached and he should have separated  
16 himself from this case.

17 MR. PATITUCE: Yes, your Honor.

18 THE COURT: Is there anything on the  
19 face of the search warrant itself or in this case  
20 that specifically references and includes and  
21 involves Heartless Felons?

22 MR. PATITUCE: Yes, your Honor.

23 THE COURT: And is that in the search  
24 warrant?

25 MR. PATITUCE: Yes, your Honor.

1                   MR. KIRKLAND:    That would be  
2 accurate, your Honor.

3                   THE COURT:      I didn't hear you, Mr. --

4                   MR. KIRKLAND:    That's accurate. It  
5 is in the search warrant.

6                   MR. PATITUCE:    I believe it's  
7 repeated in seven of the 25 paragraphs.

8                   MR. KIRKLAND:    I didn't count but --

9                   MR. PATITUCE:    I believe it would be  
10 more.

11                  MS. GRAHAM:     Your Honor, if I may.

12                  THE COURT:      I was getting back to you  
13 so I can write more quickly. There you go.

14                  MS. GRAHAM:     Defense counsel's  
15 argument that the Judge should be treated like any  
16 other witness is not correct based on the law.

17                  There is a higher standard when it comes  
18 to calling judicial officers as witnesses in a  
19 case and the standard is that they should only be  
20 called if there's no other witness that could  
21 testify about similar matters, and here we have  
22 another witness who can.

23                  So just to put the Judge on the stand to  
24 simply question his integrity and whether or not  
25 he was, you know, had some underlying, without

1                   really much of a factual support other than an  
2                   argument that it would only be natural for him to  
3                   feel a bias towards gangs; that this would somehow  
4                   impede his impartiality in performing his judicial  
5                   duties is not enough to overcome that standard.

6                   THE COURT:    Well, do you agree with  
7                   the proposition under Franks that a judicial  
8                   officer, in this case Mr. or Judge Astrab, has to  
9                   be neutral and detached, that that's the standard?

10                  MS. GRAHAM:    I do agree he has to be  
11                  neutral and detached.

12                  THE COURT:    Just to use Detective  
13                  Johnson as an example, how would his testimony, if  
14                  that's another source of information that you  
15                  suggest exists, how would Detective Johnson be  
16                  able to determine whether or not Judge Astrab is  
17                  neutral and detached with regard to taking on the  
18                  responsibility of considering a search warrant  
19                  when that search warrant involves Heartless  
20                  Felons?

21                  MS. GRAHAM:    I would say that you  
22                  have to be able to show that there was some  
23                  conduct on the part of Judge Astrab that  
24                  demonstrates that he was not neutral and detached.  
25                  Here there was no conduct whatsoever. It's just

1 assumed argument that he was inherently biased  
2 without any action or support to show -- any  
3 conduct that he conducted that would show that.

4 For example, he would not be neutral and  
5 detached if he had separated himself from his role  
6 as a judge and did something where he went forward  
7 in conducting the warrant or something along those  
8 lines.

9 THE COURT: Mr. Patituce, what's your  
10 response to counsel's observation that the  
11 detective could describe his conduct in dealing  
12 with this situation, that that would get some  
13 facts toward his neutral and detached mind-set or  
14 lack of it in that circumstances?

15 MR. PATITUCE: Your Honor, I disagree  
16 with the proposition that the detective is capable  
17 of testifying to what is in the mind -- again as  
18 relates to the threats he received of Judge Astrab  
19 for instance, I'm not sure if --

20 THE COURT: Let me just stop you right  
21 there. Ms. Graham didn't say anything about  
22 trying to understand his mental thinking. She was  
23 describing testimony regarding the judge's  
24 conduct.

25 I think even the basic jury instructions

1       says you can't read what's in someone's mind but  
2       you can observe their conduct and the conclusions  
3       regarding their conduct as to what's going on in  
4       their mind.

5                   So I think that's a pretty standard jury  
6       instruction. Better than what I've articulated  
7       here today, but I think you get the concept and I  
8       would suspect that's what she was suggesting that  
9       this officer, this detective, or someone else  
10       could describe how he was handling this particular  
11       search warrant, what he said, what his mannerisms  
12       were, how he dealt with this and whether it was an  
13       indicator along the lines of what you're thinking  
14       or it was an indicator that he was neutral and  
15       detached.

16                MR. PATITUCE:     First, your Honor, I  
17       believe that would be asking the witness to reach  
18       a legal conclusion. But as relates to conduct  
19       your Honor, I do have evidence here that Judge  
20       Astrab was influenced by this and I have it in his  
21       own words.

22                I have before me a Facebook post of  
23       September 22, 2015 where he references the "stress  
24       by the death threats." So I do believe -- and I  
25       have that here in front of me, your Honor, if the

1 Court wishes to review it.

2 So Judge Astrab has put out into the  
3 public the stress that he felt from the death  
4 threats. Obviously this manifested on him some  
5 sort of stress that he publicly posted or made a  
6 representation to the world about this so I  
7 believe that Judge Astrab is the only one who can  
8 testify as to that, how it impacted him  
9 personally.

10 And does this Court, your Honor, in  
11 determining whether or not he was neutral and  
12 detached take -- how does the Court weigh that  
13 evidence other than from him, because as Judge  
14 Astrab has stated, it's been a tough few months  
15 with stress from the cases, death threats, and he  
16 goes on further. That is -- that's manifest  
17 conduct.

22 MR. PATITUCE: Yes, your Honor. Yes.

23 THE COURT: So there's something about  
24 the search warrant itself that you're challenging

25 MR. PATITUCE: Yes.

1                   THE COURT:    Well, what I think we will  
2 do at this point is that we'll take evidence as to  
3 the search warrant itself because we're apparently  
4 ready to do that today.

5                   MR. KIRKLAND:    Yes, your Honor.

6                   THE COURT:    And we will all continue  
7 to consider whether or not we'll need Judge Astrab  
8 and that issue as a secondary basis we're not  
9 going to resolve that issue today.

10                  I understand the arguments. Have you  
11 briefed that, Ms. Graham, as well?

12                  MS. GRAHAM:    I did and I have one  
13 more comment to make about what was just said  
14 regarding him wanting to get into the mind of  
15 Judge Astrab.

16                  First of all, he's basically imputing  
17 something on the Judge based on his own personal  
18 feelings of what he thinks the Judge must have  
19 felt and that there must be a bias. But the  
20 standard of law regarding judges is that bias and  
21 prejudice on the part of a judge cannot be  
22 presumed.

23                  So, feelings regarding what happened in a  
24 prior incident or prior case are not a basis to  
25 show that he was prejudiced in this case and there

1 should be a presumption that he was not biased in  
2 this case and without facts regarding this  
3 incident in this one to show how he was biased or  
4 impartial here and there's nothing to support  
5 that.

6 THE COURT: Well, on your  
7 interpretation of these cases are there any  
8 circumstances for a judge who issues a search  
9 warrant to be required to testify?

10 MS. GRAHAM: If an example happened  
11 where a judge went out and personally executed a  
12 warrant or something like that and he crossed the  
13 line abandoning, wholly abandoning his judicial  
14 role, then that would be a scenario.

15 But that certainly did not happen in this  
16 case. He is simply the Judge that signed the  
17 warrant in this case.

18 THE COURT: What if a Judge made  
19 statements to others or on Facebook that involved  
20 the potential defendants in the search warrant?  
21 Is that sufficient to inquire?

22 MS. GRAHAM: I don't think it is,  
23 your Honor, because there would have to be  
24 something -- something to show that when the  
25 warrant was being executed not just an overall

1       opinion about, you know, gangs or something along  
2       those lines; that wouldn't be sufficient to meet  
3       the standard.

4 THE COURT: Okay. So you made your  
5 points for the record at this point.

6 MS. GRAHAM: Yes, your Honor.

10 MR. PATITUCE: Just as I understand  
11 the Court's -- what the Court is saying we're  
12 going to do today, that was going to be my  
13 suggestion to proceed. What we have here -- am I  
14 permitted to ask Detective Johnson questions  
15 regarding Judge Astrab or is that wholly going to  
16 be tabled to another day?

17                   Because my concern is if the Court agrees  
18                   that perhaps I can get this from Detective  
19                   Johnson, I don't want to preclude myself from  
20                   asking those questions. If we save that part for  
21                   another day, that's fine, or I can ask him. I  
22                   just want to make sure I'm following Court  
23                   procedure.

24 THE COURT: Is there any objection by  
25 either prosecutor if defense counsel asks

1           questions concerning how the Judge conducted  
2           himself concerning -- regarding this search  
3           warrant?

4           MS. GRAHAM:       No, I don't object to  
5           that.

6           MR. KIRKLAND:      I don't object.

7           THE COURT:        You're permitted to do  
8           that. Now we'll focus on the search warrant  
9           itself and that's the main focus of our testimony  
10          except as you discussed.

11          I do want to put on the record, at least  
12          make sure everybody understands this and I think  
13          it's an important point.

14          There is a practice, I don't think it's a  
15          policy, at least a practice among the prosecutors  
16          that if someone challenges a search warrant, that  
17          thereafter whatever the success of that motion is,  
18          there will be no plea bargaining in the case or  
19          plea discussions in the case and the defendant  
20          will either face the indictment and deal with that  
21          in terms of the plea deal or go to trial.

22          I don't know if that's Mr. Kirkland's  
23          practice or not, but I do think it's an important  
24          point to put on the record so that the defendant  
25          is not unduly surprised if that situation

1 develops.

2 MR. KIRKLAND: Your Honor, to answer  
3 that question in circumstances of this case, I  
4 would not state that that would be necessarily  
5 appropriate.

6 THE COURT: So going forward on the  
7 motion filed by the defense and actually  
8 proceeding to challenge the warrant that's not  
9 going to lead you one way or the other in deciding  
10 whether or not it would be appropriate to  
11 entertain a plea offer or a plea discussion if  
12 that would arise at some point in time in the  
13 future.

14 MR. KIRKLAND: No, your Honor.

15 THE COURT: All right. With that  
16 understood, Mr. Patituce, you filed the motion.

17 Mr. Kirkland, are you prepared to go  
18 forward?

19 MR. KIRKLAND: Yes, I am, your Honor.

20 THE COURT: So why don't you go  
21 forward and we'll have Mr. Patituce cross-examine.

22 MR. KIRKLAND: Thank you. State  
23 would call Detective Alfred Johnson of the  
24 Cleveland Police Department.

25 MR. PATITUCE: Just a separation of

2 THE COURT: Granted.

3 | - - - -

4                   The STATE OF OHIO, to maintain the issues on  
5                   its part to be maintained, called as a witness,  
6                   ALFRED JOHNSON, who, being first duly sworn, was  
7                   examined and testified as follows: .

8 DIRECT EXAMINATION OF ALFRED JOHNSON

9 BY MR. KIRKLAND:

10 Q. Sir, could you state your name and spell your name  
11 for the record.

12 A. Detective Alfred Johnson, J-O-H-N-S-O-N, badge  
13 number 60.

14 Q. And by whom are you employed?

15 A. City of Cleveland, Division of Police.

16 Q. And how long have you been employed by the police  
17 department?

18 A. Since 2007.

19 Q. And could you briefly describe your assignments in  
20 the last nine years or so.

21 A. Initially I was assigned to Fifth District patrol,  
22 the old sixth, the new Fifth District near the  
23 St. Clair area. I then moved to the community services  
24 unit in the Fifth District. From there I went to the  
25 Third District community services unit and from there I

1 went to the Gang Impact Unit.

2 Q. Could you explain what the community services unit  
3 does?

4 A. Community services unit deals with community  
5 problems, councilmatic complaints. Usually if someone  
6 makes a complaint about a street or an area, we would  
7 go there and try to resolve the complaint. We will  
8 also deal with the community conversations and try to  
9 make community police relations better.

10 Q. And when did you join the Gang Impact Unit?

11 A. 2013.

12 Q. And have you had any specialized training in  
13 connection with that assignment?

14 A. Yes.

15 Q. Can you briefly describe that for the record.

16 A. Okay. Before I was a Cleveland police officer, I  
17 worked in the Cuyahoga County Sheriff's Department on  
18 the SRT team.

19 THE COURT: SRT would be what?

20 A. Special response team.

21 Q. Thank you.

22 A. As a member of the SRT team we responded to fights  
23 with inside the jail and I got training in dealing with  
24 those fights and also just training into use of force  
25 situations.

1       From there I had training in the academy for the  
2 police. I've also received numerous trainings for gang  
3 investigations. Certified gang investigative  
4 specialist from OPOTA. Went to that class twice. I  
5 went through search and seizure class. I went through  
6 interview and interrogation classes. From 2008  
7 through -- through 2016, I went to numerous courses and  
8 received numerous certifications. And just in 2015 I  
9 started to actually teach my own classes.

10 Q.    Where are you teaching those classes, detective?

11 A.    I've taught classes in Akron, Ohio. I've taught  
12 classes for the prosecutor's office. I've taught  
13 classes for parole. I've taught classes for juvenile.

14 Q.    Are you familiar with a group called the Heartless  
15 Felons?

16 A.    Yes.

17 Q.    How did you first come in contact with that group  
18 or how did you first learn of that group, detective?

19 A.    While working in the Cuyahoga County Jail, again I  
20 said we responded to fights. I initially started  
21 working there in 2002. Those fights initially were  
22 like one-on-one fights. It wasn't really group or gang  
23 fights until approximately 2005 we started to see group  
24 fights, like five or six people on one. We started to  
25 investigate why those fights happened and we became

1 aware of this gang, the Heartless Felons.

2 We decided to separate the leaders of these gangs  
3 and put them in different pods inside the jail areas  
4 where inmates lived.

5 Q. While doing that we also were -- well, I was able  
6 to categorize who the leaders of this Heartless Felons  
7 gang were and had conversation with those leaders.

8 From there in the Fifth District CSU we had  
9 councilmatic complaints for one of the members, Donte  
10 Ferguson, who had gotten out and was, for lack of a  
11 better word, terrorizing the area of Nathaniel, 156th  
12 and St. Clair.

13 Councilman Mike Polensek sent an email to my  
14 commander stating he wants to know what was going on  
15 and we tried to assist in dispersing that gang in that  
16 area which led to -- actually that gang was responsible  
17 for the Five-Six Bricks versus the Lake Shore  
18 shootings. Donte Ferguson actually went to the federal  
19 prison in 2015 I believe or 2014.

20 Q. Was that --

21 A. I'm sorry.

22 Q. And you continued your investigations into the  
23 Heartless Felons; would that be accurate?

24 A. Yes.

25 MR. KIRKLAND: May I approach, your

1 Honor?

2 THE COURT: You may.

3 Q. Detective, I've handed to you what has been marked  
4 for purposes of identification as State's Exhibit 1.

5 Could you quickly read that?

6 MR. PATITUCE: Yes, I did.

7 A. Yes, I recognize this as the affidavit in the  
8 search warrant.

9 Q. Going to the affidavit on page 9 of paragraph 25.

10 A. Yes.

11 Q. Is that your signature there, detective?

12 A. Yes.

13 Q. Do you remember drafting this affidavit and search  
14 warrant?

15 A. Yes.

16 Q. And to whom did you present the affidavit and  
17 search warrant?

18 A. It was first reviewed by the prosecutor's office  
19 and then presented to Judge Astrab.

20 Q. By yourself? Presented to Judge Astrab by  
21 yourself; is that correct?

22 A. Yes.

23 Q. And did he -- is that his signature below your  
24 signature?

25 A. Yes.

1 Q. And was that on the 12th day of April as  
2 indicated?

3 A. Yes.

4 Q. And when did you again join the Gang Impact Unit,  
5 detective?

6 A. In 2013.

7 Q. Has a significant amount of your investigative  
8 efforts been directed towards the Heartless Felons?

9 A. Well, it would be a lot of investigative efforts  
10 directed to the Heartless Felons.

11 Q. Among other gangs?

12 A. Among other gangs, yes.

13 Q. I'd like you to briefly describe -- I mean set  
14 forth have you reviewed this affidavit?

15 A. Yes.

16 Q. And having reviewed it, does it set forth accurate  
17 statements as to your investigation in connection with  
18 Michael Menefield?

19 A. Yes.

20 Q. When did Michael Menefield first come to your  
21 attention?

22 A. Michael Menefield first came I believe it was  
23 2014.

24 Q. And how did he come to your attention?

25 A. I was investigating Instagram posts of a man,

1 Daryl Patton Jr.

2 Q. Is that reflected in paragraph three of the  
3 affidavit?

4 A. Yes.

5 Q. Specifically in paragraph three you indicate that  
6 you're looking at Daryl Patton and you came up with,  
7 correct me if I'm wrong, a social media account which  
8 was MilezAv, M-I-L-E-Z-A-V, underscore MilesAv felon  
9 8631.

10 A. That's what it's supposed to be, Miles Avenue. I  
11 couldn't quite figure that out looking at it.

12 Q. And what's the significance you set forth in  
13 paragraph three, the significance of the 8631? What  
14 exactly -- can you state for the record what is the  
15 significance at the end of that social media account?

16 A. 8631 is the numerical relation to the alphabet  
17 HFCA which is Heartless Felons collaboration.

18 Q. The H, if I understand correctly here, is the  
19 eighth letter in the alphabet.

20 A. Yes.

21 Q. And then after that F would be the sixth letter?

22 A. Correct.

23 Q. Is that, in your experience, is that a frequent  
24 acronym or code that they utilize?

25 A. Yes, that's a frequent acronym.

1 Q. You've seen it?

2 A. Yes. Multiple times.

3 Q. And this was back when? What year was this again?

4 A. 2014.

5 Q. Early part of 2014?

6 A. Yes.

7 Q. And this is spelled out in paragraph three,

8 paragraph four --

9 A. Yes.

10 Q. -- of your affidavit?

11 A. Yes.

12 Q. And you determined that as set forth in paragraph

13 four that that Instagram account was associated with

14 Daryl Patton Jr.; is that correct?

15 A. Yes.

16 Q. And based upon your investigation into Mr. Patton,

17 what next did you do in regards to Mr. Patton?

18 A. After finding Mr. Patton posted several firearms

19 for sale we were able to find the address of

20 Mr. Patton, his listed address as 8815 Walker in

21 Cleveland. We then went to the house and did a consent

22 search and recovered one of the weapons, a fully

23 automatic firearm and some Heartless Felons

24 shoes. They was actually Timberland boots with

25 Heartless Felons stuff written on them.

1 Q. Did that set forth in paragraphs five, six, and in  
2 paragraph seven you indicate that he was arrested; is  
3 that correct?

4 A. Yes. Daryl Patton was not at the house at the  
5 time. Because he was not at the house, we could not  
6 put the weapon in his possession. He actually took the  
7 Instagram posts but his pictures was not in the  
8 photo. But what he did later was on St. Patrick's Day  
9 in 2014, he came downtown with a firearm and he was  
10 arrested by members of the Gang Impact Unit.

11 Q. Going forward from there, you continued the  
12 investigation into the Heartless Felons; is that  
13 correct?

14 A. Yes. With Daryl Patton Jr.'s accounts we were  
15 able to see people he was communicating with and also  
16 members who also used Heartless Felons language and  
17 lingo so we were able to follow those males and females  
18 also.

19 Q. Okay. Back in August, August 1st of 2014, was  
20 there an incident that you set forth in paragraph ten  
21 involving Daryl Patton?

22 A. Yes.

23 Q. I know it's set forth in paragraph ten, but could  
24 you briefly describe it, please?

25 A. Daryl Patton Jr. posted on Instagram a picture of

1 himself, Michael Menefield and Deshawn Scruggs. They  
2 were handling firearms in a motor vehicle and they said  
3 that they were going to Club XL, also known use the  
4 Executive Lounge, in downtown Cleveland.

5 We had this information and we were out in the  
6 area when a call came across our radios for a fight at  
7 the Executive Lounge. Knowing that these guys were  
8 there, I responded and I was able to see Daryl Patton  
9 Jr. get into a vehicle with Michael Menefield and  
10 Deshawn Scruggs. I called for a backup. Cars arrived.  
11 They conducted a traffic stop. In this traffic stop  
12 they found two handguns, and one holster inside the  
13 vehicle.

14 Daryl Patton Jr. pled guilty to improperly  
15 handling firearms in a motor vehicle on January 6th,  
16 2015. Case Number 2014-588008.

17 Q. Now, Michael Menefield, was he also charged in  
18 connection with that incident?

19 A. I'm sorry. Michael Menefield pled to that, if I  
20 said that wrong. But, yeah, Michael Menefield was  
21 charged and pled to that. Daryl Patton Jr. was  
22 not. He only had a holster at the time.

23 Q. And as a result of that case you said he pled  
24 guilty that is Michael Menefield did, January 6th of  
25 2015; is that correct?

1 A. Yes.

2 Q. Was that the first time you'd come into contact  
3 with Michael Menefield?

4 A. Yes.

5 Q. Now, as you indicated in paragraph 11 of the  
6 affidavit, Michael Menefield left prison on September  
7 21st of 2015; is that correct?

8 A. Yes.

9 Q. In fact did you discover a social media post of  
10 him relative to his getting out of prison?

11 A. Yes. We continued to monitor his social media  
12 account and that was underscore Mikey underscore 216.  
13 He actually posted the day that he got out of prison.

14 It was a pictures of him and a female in front of  
15 the facility that he was housed in.

16 Q. And when you saw that post on that Instagram  
17 account you recognized Michael Menefield; is that  
18 correct --

19 A. Yes.

20 Q. -- through previous contacts?

21 A. Yes.

22 Q. This is set forth in paragraph 13 of Exhibit A; is  
23 it not --

24 A. Yes.

25 Q. -- of your affidavit; is that correct?

1 A. Yes.

2 Q. You indicated on October 27th of 2015 that you  
3 monitored that Instagram social media account and  
4 observed something else; is that correct?

5 A. Yes.

6 Q. And what exactly did you observe?

7 A. I observed Michael Menefield shooting an AK-47 at  
8 a firing range.

9 Q. And that is set forth in paragraph 13 of your  
10 affidavit, is it not, detective?

11 A. Yes.

12 Q. Now, as part of your investigation into the  
13 Heartless Felons did you investigate an individual  
14 known as Marvin Linder?

15 A. Yes.

16 Q. And as a result of that particular investigation  
17 did you conduct a search of his address or any address  
18 associated with him?

19 A. Yes.

20 Q. And what was that address, sir?

21 A. This address was 15609 Steinway in Maple Heights,  
22 Ohio.

23 Q. When was that? Do you remember roughly when that  
24 search was conducted?

25 A. On November 12, 2015.

1 Q. And during that search did you recover any  
2 weapons?

3 A. Yes. We actually recovered several weapons  
4 including an AK-47. I believe it was at least six  
5 handguns.

6 Q. As it pertains to this particular case before us  
7 and the investigation into Mr. Menefield, did you  
8 contact a confidential informant regarding that AK-47  
9 or did a confidential informant contact you?

10 A. Yes.

11 Q. And what was indicated to you at that time about  
12 the AK-47?

13 A. The AK-47 was either purchased or -- purchased  
14 from Michael Menefield or belonged to Michael Menefield  
15 and was given to Marvin Linder to hold. The  
16 confidential informant actually told me who Michael  
17 Menefield was. He pointed out a picture of Michael  
18 Menefield and told me where Michael Menefield lived.

19 He also told me where Michael Menefield lived  
20 before on the same street on Milan in Maple  
21 Heights. And I was able to pull up a Goggle maps photo  
22 of the house which I showed the Google maps photo to  
23 him and he confirmed that this is the house where he  
24 lived.

25 Q. Detective, I have to ask this question. Those

1 particular details that you just provided to me as to  
2 showing him the house, et cetera, and the picture of  
3 him, that is not set forth in the affidavit; is that  
4 correct, as you look at it today?

5 A. Correct.

6 Q. Quite frankly you forgot to put those in there.

7 A. No. The basis of the search warrant was the  
8 information and the address that we had for Michael  
9 Menefield.

10 Q. Okay. I'll come back to that later. But those  
11 details that you just described to me about your  
12 interaction with the confidential informant, those are  
13 not in that particular -- information is not in the  
14 affidavit save for the information that he indicated  
15 that the AK-47 that Marvin Linder had came from Michael  
16 Menefield in some way.

17 A. Correct.

18 Q. Did you continue to monitor -- and again that  
19 particular information as to Marvin Linder and the  
20 AK-47 set forth in paragraphs 14 and 15 of the  
21 affidavit; is that correct, detective?

22 A. Yes.

23 Q. Did you continue to monitor the social media that  
24 you associated with Michael Menefield specifically  
25 underscore Mikey underscore 216?

1 A. Yes.

2 Q. And on October 9th of 2016 did you find any  
3 particular information that you utilized to obtain this  
4 search warrant?

5 A. Yes.

6 Q. Could you briefly describe what that was,  
7 detective?

8 A. There was a video of Michael Menefield driving a  
9 vehicle. He had four handguns in his lap and a handful  
10 of folded U.S. currency. He was playing with the  
11 handguns as he was driving in the vehicle. And he also  
12 had money in the vehicle. A lot of what appeared to be  
13 U.S. currency in the vehicle.

14 Q. And was there a Youtube or social media post with  
15 him shooting a handgun about that same time?

16 A. Yes. He also posted the next video of himself at  
17 the gun range shooting the weapons to show operability.

18 Q. Now, I want to go back, detective. You have  
19 indicated just a couple minutes ago that you had an  
20 address for Michael Menefield. What was that address?

21 A. The address belonging to Michael Menefield was  
22 19409 Milan, Maple Heights, Ohio.

23 Q. And that's set forth in paragraph 12 of your  
24 affidavit, is that not, detective?

25 A. Yes.

1 Q. And the paragraph above that paragraph 11, what  
2 did you indicate there in your affidavit?

3 A. In paragraph 11?

4 Q. Yes.

5 A. That Michael Menefield served his prison time and  
6 was released from prison on September 21, 2015.

7 Q. In paragraph 12 you indicate that the address of  
8 19409 Milan Drive, Maple Heights, when you drafted this  
9 affidavit, that was indicated from his prison release  
10 on September 15th, 2015?

11 A. Yes.

12 Q. And that is what you meant when you drafted this  
13 affidavit?

14 A. That along with D Fax report other investigative  
15 sources that we were able to find that 19409 Milan was  
16 his address.

17 MR. PATITUCE: Objection, your Honor.  
18 Just for purposes of the record we've never been  
19 provided any of these investigative D Fax.

20 MR. KIRKLAND: That's the stuff I  
21 gave you.

22 MR. PATITUCE: You're talking about  
23 OHLEG.

24 MR. KIRKLAND: There's a D Fax  
25 associated with it.

1 MR. PATITUCE: OHLEG is fine.

2 Q. And based upon this affidavit you attempted to  
3 conduct a search at 19409 Milan Drive on April 15th; is  
4 that correct?

5 A. Yes.

6 O. And you were present when that was conducted?

7 A. Yes.

8 Q. But the actual search warrant was executed by  
9 whom?

10 A. It was the SEAL team, Southeast Area Law  
11 Enforcement team that conducted the search warrant  
12 along with Maple Heights who assisted.

13 Q. And as indicated in the search warrant which you  
14 were searching for, was criminal gang materials,  
15 firearms, records of illegal transactions, personal  
16 property, paper, documents, evidence involving criminal  
17 gang activities. Would that be correct without  
18 repeating the whole --

19 A. Yes, looking for criminal gang materials, evidence  
20 of illegal trafficking in firearms and such.

21 MR. KIRKLAND: I have no further  
22 questions of this witness, your Honor.

23 | THE COURT: Cross-examine.

24 MR. PATITUCE: Yes.

25 | - - - - -

1 (Thereupon, Defendant's Exhibits A and B  
2 were marked for purposes of  
3 identification.)

4 - - - -  
5 MR. PATITUCE: May I approach, your  
6 Honor.

7 THE COURT: You may.

8 CROSS-EXAMINATION OF ALFRED JOHNSON

9 BY MR. PATITUCE:

10 Q. Your Honor, I am showing the witness what has been  
11 previously marked as Defendant's Exhibit A for  
12 identification purposes.

13 Detective, can you take a look at Defendant's  
14 Exhibit A?

15 A. Yes.

16 Q. You're familiar with this form. This is a CIF  
17 form, correct?

18 A. This is.

19 Q. Start with page 1. Page 1 is what?

20 A. This is Cuyahoga County Metro Housing Authority.  
21 Police Department complaint.

22 Q. And it is, just to verify, I'll get my copy back  
23 out here. You see there's a seal on the bottom right  
24 hand corner, correct?

25 A. Yes.

1 Q. And whose information is listed on this form?

2 A. This is going to be Michael Menefield.

3 Q. Does it list an address for Mr. Menefield?

4 A. Yes.

5 Q. What address does it list for Mr. Menefield?

6 A. This address here is 19321 Milan, Maple Heights,  
7 Ohio.

8 Q. Okay. Now, I want you to go to the second page of  
9 this document. Is there an address listed on the  
10 second page of this document for Michael Menefield?

11 A. Yes.

12 Q. What address is listed on that?

13 A. 19321 Milan, Maple Heights, Ohio.

14 Q. So somehow we have two -- is that two different  
15 addresses within Maple Heights that Mr. Michael  
16 Menefield's is associated with?

17 A. Yes.

18 Q. Okay. Are you aware that the Cuyahoga County  
19 docket for all three cases Mr. Menefield has or had  
20 open show an address other than 19409 Milan Avenue?

21 THE COURT: I'm sorry. Can you  
22 repeat, please?

23 Q. Are you aware of what the Cuyahoga County Clerk of  
24 Courts has listed as Michael Menefield's address?

25 A. Not if I'm not looking at it right now in front of

1 me, no.

2 Q. Would it surprise you to know that it's listed as  
3 the first address on Defendant's Exhibit A that's what  
4 the county has his address listed as being?

5 A. No, it would not surprise me.

6 Q. Are you aware that the confidential informant for  
7 his case listed an address of 19409 as Mr. Michael  
8 Menefield's address?

9 A. Yeah. You just showed me the CIF.

10 Q. So the CIF for this incident has a different  
11 address than the address with -- I'll rephrase it.

12 You'll agree with me that on the CIF for this case  
13 there's an address not 19409 Milan Ave?

14 A. Yes.

15 Q. But 19490 Milan Ave. was the address that was  
16 raided.

17 A. That was the address that the search warrant was  
18 conducted at, yes.

19 Q. I want to focus on your training, your career,  
20 your experience as police officer for a moment. You  
21 understand what I'm talking about?

22 A. Yes.

23 Q. The prosecution asked you a number of questions  
24 regarding your training and your qualifications, right?

25 A. Yes.

1 Q. It's correct that you've been suspended nine times  
2 for violations of departmental policies, correct?

3 A. That's incorrect.

4 Q. How many times have you been suspended?

5 A. I probably -- I'm thinking around three.

6 Q. Okay.

7 MR. KIRKLAND: Objection. Relevancy,  
8 your Honor.

9 THE COURT: Overruled for the moment.

10 Q. On January -- was it January 28 2015 you were  
11 suspended for violation of the rules of ethics?

12 A. Was that the suspension date or was that the  
13 actual date of occurrence?

14 Q. That was when you were suspended for failure to  
15 report or failure to complete a report.

16 A. Oh, that actually occurred in the summer before  
17 and the report was actually completed.

18 Q. So you were suspended for failure to report  
19 though, correct? You were actually found guilty I  
20 think was the technical term that the hearing officer  
21 used.

22 A. I don't know exactly what they found me guilty  
23 of. I was accused of a lot of things by the person but  
24 I don't know exactly what at the time -- it was the  
25 safety director, what he found me guilty of.

1 Q. This is while you were in the gang unit, correct?

2 A. No.

3 Q. In 2015 you weren't in the gang unit?

4 A. I was in the gang unit in 2015 but from my  
5 recollection of what you're saying that was while I was  
6 in the Fifth District.

7 Q. Okay. And there have been other instances where  
8 you have been disciplined for either failure to report,  
9 use of force, officer safety, leaving your district  
10 without authorization --

11 MR. KIRKLAND: Objection, your Honor.

12 THE COURT: Overruled at the moment.

13 A. That was the -- you're listing the offenses of the  
14 same thing. And use of force I don't remember being  
15 disciplined for use of force at all.

16 Q. Okay. Now, as it relates to Judge Astrab, you  
17 were the investigating or one of the investigating  
18 officers in the case in which he was the alleged  
19 victim, correct?

20 A. Yes.

21 Q. Which case was that?

22 A. Well, while he was conducting the Julius Webster  
23 trial, he also received threats. I was consulted in  
24 that so I was also in that invest.

25 Q. So you were consulted, you weren't the lead

1 investigator?

2 A. The lead investigator I believe because it was  
3 being a judge it would have to be with the sheriff's  
4 department.

5 Q. So you do not necessarily possess all of the  
6 information that was obtained in that information  
7 regarding the threat?

8 A. I possess a lot of the information that I can  
9 testify to. If there's something that I don't know  
10 about, then I can't testify to that.

11 Q. What was the nature of the threat?

12 A. It was actually a letter sent from the jail from a  
13 male in a previous trial that was convicted.

14 Q. What was this individual's name? Was it Hammonds?

15 A. I believe it was Hammonds. His -- I could tell  
16 you that the incident was he broke into a female's  
17 house in Shaker Heights --

18 Q. No, I meant the nature of the threat that was made  
19 to Judge Astrab. What specifically was the threat?

20 A. That they would do something to his child.

21 Q. They actually had the name of his child, correct?

22 A. I believe so, yes.

23 Q. So an individual sitting in prison was able to  
24 identify the name of one of Judge Astrab's children.

25 A. Yes.

1 Q. And he conveyed that in a letter form to Judge  
2 Astrab directly?

3 A. Yes.

4 Q. Okay. Judge Astrab then reported this conduct,  
5 this threat that he had received, yes?

6 A. Yes.

7 Q. And prosecution commenced as a result of --

8 A. Yes.

9 Q. And I believe Hammonds eventually pled guilty?

10 A. Yes.

11 Q. Admitted that he actually threatened Judge Astrab?

12 A. Yes, he pled guilty.

13 Q. And Hammonds was a member of the Heartless Felons  
14 as well?

15 A. Yes.

16 Q. As was the first individual who he was trying, I  
17 forget that person's name that was --

18 A. Julius webster.

19 Q. So Julius Webster was a member of Heartless  
20 Felons?

21 A. Yes.

22 Q. Hammonds was a member of the Heartless Felons?

23 A. Yes.

24 Q. And here with this search warrant you're again  
25 investigating the Heartless Felons?

1 A. Yes.

2 Q. Prior to going to Judge Astrab how many judges did

3 you go to?

4 A. I believe he was the only one that was left that

5 day so I just went directly to him.

6 Q. When you went to him you were aware that he was

7 the victim of threats from the Heartless Felons?

8 A. Yes.

9 Q. Have you ever followed Judge Astrab on Facebook?

10 A. No.

11 Q. Are you aware of anything that Judge Astrab has

12 said publicly either on Facebook or any social media

13 forum?

14 A. Only what you just said today.

15 Q. So outside of the documentation that I have and

16 just the one page that I read you have no knowledge?

17 A. No.

18 Q. You're not able to testify as to the impact or

19 effects that the threat had on Judge Astrab?

20 A. As it relates to this search warrant?

21 Q. First in general.

22 A. Right. First in general I can't tell what he's

23 thinking, no.

24 Q. Have you ever asked him how the threats made him

25 feel?

1 A. No.

2 Q. Okay. Outside of your going into Judge Astrab's  
3 chambers to have this search warrant signed, have you  
4 ever socialized with him?

5 A. Uhm, not really, no.

6 Q. And I'm not implying any type of improper  
7 association, but have you ever observed him in his  
8 daily life outside of this instance?

9 A. No.

10 Q. Have you ever -- strike that.

11 I want to talk now about Michael Menefield. At  
12 19409 Milan Drive you never conducted surveillance,  
13 correct?

14 A. That's incorrect.

15 Q. What surveillance did you conduct?

16 A. Actually the latest surveillance was the day  
17 before I sat outside of his house for approximately two  
18 or three hours. I sat outside of the house at 19409  
19 Milan. We were able to see a male that fit the  
20 description but we weren't able to positively ID him as  
21 the person as Michael Menefield.

22 Q. The day before what you sat outside?

23 A. The day before the search warrant was executed.

24 Q. Okay. So the day before the search warrant was  
25 executed you conducted surveillance. What surveillance

1 did you conduct before you took this search warrant in  
2 to Judge Astrab?

3 A. The search warrant -- I'm sorry?

4 Q. Before you took -- when you say the search warrant  
5 was executed you conducted surveillance before Judge  
6 Astrab signed it or before the search warrant was  
7 executed or raided?

8 A. After he signed it.

9 Q. So after he signed it you conducted surveillance  
10 for the first time?

11 A. It wouldn't be the first time, no. I said the  
12 last time was right -- the day before we did the search  
13 warrant.

14 Q. Can you indicate in State's Exhibit 1 where it  
15 lists out your surveillance of 19409 Milan Drive, Maple  
16 Heights there?

17 A. There's no surveillance of 19409 Milan, Maple  
18 Heights in the search warrant.

19 Q. Why not?

20 A. Because again, Michael Menefield listed his  
21 address as 19409 Milan Avenue; we also had confidential  
22 informant information that he lives at that address at  
23 19409 Milan and even after we conducted the search  
24 warrant, we later find out that he had been put out of  
25 19409 Milan Avenue by your client's father.

1 Q. Where in the search warrant does it indicate a  
2 confidential informant told you that Michael Menefield  
3 resided at 19409 Milan Avenue? Where in the search  
4 warrant is that?

5 A. It is not in there.

6 Q. So that evidence was never presented to Judge  
7 Astrab.

8 A. No.

9 Q. What type of observations did you make of 19409  
10 Milan Drive that led you to conclude that criminal  
11 activity was happening inside 19409 Milan Avenue?

12 A. The Instagram post of Michael Menefield -- I mean,  
13 I'm sorry, Michael Menefield, handling the firearm,  
14 shooting the AK-47, the continued Instagram post from  
15 other members of the Heartless Felons with Milan inside  
16 of those posts, throwing out the Heartless Felons hand  
17 signs and continuing his association with other  
18 Heartless Felons which led us to go into 19409 Milan  
19 Avenue looking for criminal gang materials and the  
20 firearms.

21 Q. Okay. So the only evidence you had -- in your  
22 opinion the only evidence that you had was social media  
23 posting?

24 A. No.

25 Q. What other evidence did you have that there was

1       criminal activity in 19409 Milan Avenue?

2       A.     Again we can start with the posting. Well, we can  
3       also start with his association with other members of  
4       the Heartless Felons gang. We can start with -- we can  
5       go into having used these postings before and gone into  
6       these homes to find multiple firearms and even once we  
7       did the search warrant into this house we found  
8       multiple firearms.

9       Q.     Okay. So now that I have an understanding, let's  
10      start with the social media posts. Are you suggesting  
11      to the Court that Michael Menefield -- on just dealing  
12      with what's in the warrant, with What's in the warrant,  
13      Michael Menefield at a gun range is going to indicate  
14      that he's got a gun at 19409 Milan Avenue?

15      A.     That's evidence. Not just the fact that he's --

16      Q.     We're going through piece by piece.

17      A.     You asked me the question. I'm trying to answer  
18      it.

19      Q.     The fact that he is firing a gun at a gun range  
20      indicates that he's going to put a gun in 19409 Milan  
21      Drive?

22      A.     Not just that. Again it's his transporting the  
23      gun to the firing range and then shooting the gun. And  
24      at this firing range you can't -- they -- you don't  
25      take a gun away from a firing range unless you purchase

1 one.

2 Q. You can't -- he was at the firing range in what  
3 month of what year?

4 A. This was -- again I've got to go back to Exhibit  
5 1. April 9th, 2016.

6 Q. So on April 9, 2016 you then had an arrest warrant  
7 drafted for Michael Menefield because he's a felon in  
8 possession of a firearm, correct?

9 A. No.

10 Q. Why not?

11 A. Because the charge would actually be improper  
12 handling of a firearm in a motor vehicle.

13 Q. So you got a warrant for that?

14 A. No, we got a search warrant for the firearms. In  
15 the criminal gang materials that would be associated  
16 with the Heartless Felons gang.

17 Q. Without personally identifying Michael Menefield  
18 is actually living at that address.

19 A. Well, Michael Menefield personally identified  
20 himself as living at that address.

21 Q. So the answer was no, you did not personally  
22 identify him living at that address.

23 A. He personally identified himself which makes that  
24 a personal identification for me.

25 Q. Detective, did you go to 19409 Milan Drive and

1 personally observe him residing in the house?

2 A. I don't know how to answer that question as to how  
3 can you personally --

4 Q. Did you see --

5 A. I observed the male that fit the description going  
6 in and out of the house.

7 Q. You said fit the description. Was that Michael  
8 Menefield or not?

9 A. Again, I don't know if it was -- I can't say that  
10 it was Michael Menefield, I can say that he fit the  
11 description going in and out of the house.

12 Q. You said that Michael Menefield is in these  
13 videos. Was Michael Menefield in the videos or not?

14 A. Yes.

15 Q. So you know what Michael Menefield looked like but  
16 you wouldn't identify the person coming out of the  
17 house as being Michael Menefield?

18 A. The way surveillance works unless I was -- the way  
19 this house was situated looking at the house, looking  
20 at the driveway, looking at the driveway next to the  
21 house, which they were also using, you could see people  
22 but I couldn't put binoculars on the person to actually  
23 identify the face because of the way the street was.

24 Q. How about trash pulls? How many trash pulls did  
25 you do in 19409 Milan Avenue or mail pulls did you do

1 to verify his --

2 A. We did that through D Fax.

3 Q. So the answer was you did no trash pulls or no  
4 mail pulls?

5 A. You asked me about mail pulls. D Fax gives you  
6 mail and whose name is on the bills and it gives the  
7 address of the person that goes to that house.

8 Q. Does that establish somebody lives there? If I  
9 put my address on my brother's -- if I use my brother's  
10 address for mail does that mean I live there?

11 A. That means that you frequent that -- you frequent  
12 that enough to go get your mail from that house which  
13 it proves the point to me that if you use that address  
14 you have personal property there. That personal  
15 property would be in your mail.

16 - - - -

17 (Thereupon, a discussion was had off the  
18 record.)

19 - - - -

20 Q. So you did not physically remove any trash or any  
21 mail from 19409 Milan Avenue, physically yourself  
22 remove anything from that address?

23 A. Yeah, I removed mail after the search warrant with  
24 Michael Menefield's name on it.

25 Q. Prior to the search warrant what did you remove

1 from the address?

2 A. Again, we does not do a trash pull.

3 Q. Aside from social -- now social media, so you went  
4 out and obtained a search warrant for the IP addresses.

5 A. For the social media accounts, correct.

6 Q. Search warrants were obtained?

7 A. Yes.

8 Q. Were the search warrants obtained prior to -- did  
9 you know about this -- and the search warrant for the  
10 IP addresses showed that those social media it doesn't  
11 go back to 19409 Milan Drive, did it goes back to a  
12 different address?

13 A. That would be something that you -- I don't have  
14 that information, no.

15 Q. You said you obtained a search warrant for the  
16 social media accounts relating to Michael Menefield?

17 A. Yes.

18 Q. Those social media accounts search warrants  
19 presented an IP address Internet protocol address?

20 A. It is when you get social media results there are  
21 multiple IP addresses and IP addresses can be a phone,  
22 IP addresses can be a computer, and usually when this  
23 comes to Instagram all of time when it comes to  
24 Instagram when you're posting you're posting from a  
25 mobile device which means the IP address is not a fixed

1 location.

2 Q. Would you agree with me not once did one of  
3 Michael Menefield's social media accounts ping off of  
4 19409 Milan Avenue?

5 A. No.

6 Q. How many times?

7 A. You asked would I agree with you. He actually has  
8 pictures of himself in the house of 19409 Milan  
9 Avenue. It's provided to you when the Instagram.

10 MR. PATITUCE: Your Honor, I believe  
11 the prosecution for this point would agree with me  
12 there's no pictures of Mr. Menefield.

13 MR. KIRKLAND: They're not in my  
14 possession. What I have is what you know of video  
15 and the firearm range.

16 Q. Does it surprise you to know that the prosecution  
17 is not in possession of any photographs of Michael  
18 Menefield inside 19409 Milan Drive?

19 A. That surprises me because you guys are -- as you  
20 stated aware of the Instagram account of Michael  
21 Menefield and on his Instagram account there's pictures  
22 of him in a bedroom at 19409 Milan Avenue.

23 Q. So you can tell by looking at Instagram postings  
24 that he is in the bedroom just by looking at someone  
25 has a photo of a bed, you instantly knew that was 19409

1 Milan Avenue?

2 A. No.

3 Q. Going back to State's Exhibit 1, do you agree with  
4 me that paragraphs 3, 4, 5, 6, 7, 8, 9, and 10 all deal  
5 with conduct happening in 2014?

6 THE COURT: What are the paragraph  
7 numbers?

8 MR. PATITUCE: Three through ten,  
9 your Honor.

10 THE COURT: Thank you.

11 A. Yes.

12 Q. And just so we have chronological clarity here  
13 perhaps one and two are just general paragraphs.

14 A. Yes.

15 Q. Paragraphs 11, 12, 13, 14, 15, deal with conduct  
16 that happened in 2015.

17 A. Yes.

18 Q. Coming back to paragraph 16 and 17. Then I want  
19 to direct your attention to paragraphs 18, 19, 20, 21,  
20 22 and 23 as well as 24 and 25. None of those  
21 paragraphs have any facts specific to this case. These  
22 are generalized or specialized knowledge regarding the  
23 Heartless Felons and your experience. Correct?

24 A. These specifically outline what we're going to be  
25 looking for and why we're going to look for them.

1 Q. Okay. But they're not -- they're general in  
2 nature because you use these exact paragraphs in other  
3 search warrants.

4 A. Yes.

5 Q. Paragraphs 18 through 25, again these are general  
6 paragraphs that you use in your Heartless Felons  
7 investigations.

8 A. Yes. Not just Heartless Felons but gang  
9 investigations.

10 Q. Sure. And paragraphs one and two would fall into  
11 that same category but those would be specific to the  
12 Heartless Felons.

13 A. Yes.

14 Q. So when we're dealing with the face of the search  
15 warrant, we're really talking about unique paragraphs  
16 are paragraphs three through 17. Those are unique to  
17 this investigation.

18 A. Yes.

19 Q. Okay. And then again just dealing with the face  
20 of the search warrant, the only two paragraphs out of  
21 the 25 that deal with any conduct happening in 2016  
22 would be paragraph 16 and paragraph 17.

23 A. As in -- to answer that -- well, as in the date on  
24 these would be 2016.

25 Q. That's what I'm talking about. And this is the

1 information you provided to Judge Astrab. You didn't  
2 provide information outside of these ten paragraphs,  
3 excuse me, 25 paragraphs, did you?

4 A. Just what the photos that you have.

5 Q. Okay. So then we have the paragraph 16 and  
6 paragraph 17 dealing with 2016 conduct, that's conduct  
7 allegedly of Michael Menefield, correct?

8 A. Yes.

9 Q. Michael Menefield's never been convicted of a  
10 crime out of the conduct in these two paragraphs,  
11 right?

12 A. Not yet.

13 Q. Paragraph 16 is a video of Mikey 216 on April 9th,  
14 2016 driving a vehicle with four different guns and it  
15 said folded U.S. currency?

16 A. Yes.

17 Q. So he's driving a gun at the time? I am sorry.  
18 So he's driving a car at that time?

19 A. Yes.

20 Q. So he's not at 19409 Milan Avenue at that time?

21 A. No.

22 Q. Paragraph 17, that's April 9, 2016. Again under  
23 Mikey 216 has shooting a firearm at a gun range?

24 A. Yes.

25 Q. There is no firearm at 19409 Milan Avenue, is

1 there?

2 A. There's multiple firearms at 19409 Milan Avenue.

3 Q. Gun range.

4 A. No, there's no gun range.

5 Q. So the conduct in paragraph 17 is not happening at  
6 19409 Milan Avenue.

7 A. No.

8 Q. So, for the two paragraphs in the affidavit that  
9 deal with conduct that happened in 2016, specific  
10 conduct, there's nothing that's happening at 19409  
11 Milan Avenue in 2016 in this affidavit that's  
12 specifically identified.

13 A. That's not true. Michael Menefield lists his  
14 address as 19409 Milan Avenue in 2016.

15 Q. Is it criminal to list his address?

16 A. No, it's just self-admission that you live there.

17 Q. So, what we have is we have Michael Menefield list  
18 his address, allegedly list his address as 19409 Milan  
19 Avenue, right?

20 A. No. He listed his address as 19409 Milan Avenue.

21 Q. Even though there are county records that dispute  
22 that.

23 A. You gave me his records from 2012.

24 Q. Are you familiar with what the clerk of courts  
25 currently has listed as his address?

1 A. No.

2 Q. You did actually look at the clerk of courts to  
3 see what his address is listed because you knew he had  
4 priors, right?

5 A. Yes, I listed priors in there so I looked at the  
6 Clerk of Courts.

7 Q. And I don't know if the prosecution is willing to  
8 look at it. Are you willing to stipulate?

9 MR. KIRKLAND: Willing to stipulate  
10 that there's a different address on the clerk of  
11 courts? I don't know that.

12 MR. PATITUCE: May I have a moment,  
13 your Honor?

14 THE COURT: You may.

15 MR. PATITUCE: Your Honor, may I  
16 approach? I only have one copy of this but this  
17 will be Defendant's Exhibit B.

18 Q. Showing the witness what has been previously  
19 marked as Defendant's Exhibit B, you recognize this as  
20 a complaint summary form, correct?

21 A. Yes.

22 Q. And it's from this case, correct?

23 A. Uhm.

24 Q. From the same day, same location that my client is  
25 charged?

1 A. Yes.

2 Q. And what's the address that is listed for Michael  
3 Menefield on this document?

4 A. On this it's 19321 Milan, Maple Heights, Ohio.

5 Q. Not 19409 Milan Avenue?

6 A. No.

7 Q. How often have you used the confidential  
8 informant -- without identifying who he is, how long  
9 have you used the confidential informant that allegedly  
10 told you Michael Menefield lived at this address?

11 A. This was twice. Well, actually it would be three  
12 times now.

13 Q. Today or at the time of the search warrant?

14 A. At the time of the search warrant it would be the  
15 third time.

16 Q. Okay. And it's not related -- his reliability is  
17 not indicated anywhere in your search warrant  
18 affidavit, correct?

19 A. We just labeled him as a CI right now,  
20 confidential informant. It's not a confidential  
21 reliable informant, no.

22 Q. And there's a difference between a confidential  
23 informant and a confidential reliable informant?

24 A. Correct.

25 Q. What is that difference?

1 A. The difference is the amount of time we've used  
2 him and found the information to be again reliable.

3 Q. And often confidential informants are people who  
4 you have perhaps either arrested or have evidence of  
5 wrongdoing who are trying to help themselves?

6 A. Yes.

7 Q. So this is a confidential informant this is not  
8 somebody who you've used long enough to determine a  
9 confidential reliable informant.

10 A. Correct.

11 Q. And again nothing in this affidavit indicates that  
12 the confidential informant alleged Michael Menefield  
13 lived at 19409 Milan Avenue.

14 A. That's not in the affidavit, no.

15 Q. Nothing in this affidavit suggests that the  
16 confidential informant indicated Michael Menefield was  
17 running guns or bringing guns to and from 19409 Milan  
18 Avenue.

19 A. That's not true. It says information received  
20 through confidential informant states the AK-47 was  
21 obtained from Michael Menefield and that Michael  
22 Menefield supplies weapons for the members of the  
23 Heartless Felons.

24 Q. Okay. Nothing in here said that he is storing  
25 those weapons at 19409 Milan Avenue. Nothing from this

1 paragraph says that.

2 A. No.

3 Q. Nothing from the confidential informant in the  
4 affidavit says that?

5 A. In the affidavit, no.

6 Q. So again the three out of the 25 paragraphs, only  
7 three of the paragraphs touch on conduct that happened  
8 in 2016. Correct?

9 A. As 2016?

10 Q. Yes.

11 A. Yes.

12 Q. The paragraph that states Michael Menefield listed  
13 his address at 19409.

14 A. Yes.

15 Q. And Michael Menefield possessed a picture or  
16 Instagram account of himself in a vehicle with guns?

17 A. Yes.

18 Q. And the vehicle was actually moving at the time,  
19 right?

20 A. Yes.

21 Q. And next was Mr. Menefield at a firearms range.

22 A. Yes.

23 Q. There's no 2016 -- in the search warrant, there's  
24 no 2016 Instagram account, Facebook post or any form of  
25 social media showing Mr. Menefield at any of those two

1 locations.

2 A. In the search warrant, no.

3 Q. So you agree with me that on the face of the  
4 search warrant in 2016, going from just the search  
5 warrant, there's no evidence that Michael Menefield in  
6 2016 had firearms at that location.

7 A. No, I wouldn't agree with you.

8 Q. Okay. Which paragraph indicates that he possessed  
9 video of himself at Milan Drive? Which paragraph?

10 A. If you're going to ask me -- there's not going to  
11 be a paragraph that says that, but you asked me did I  
12 agree with you and I said no, I did not agree with you  
13 that the information does not lead to that.

14 Q. In 2016, in this affidavit for 2016, there's not a  
15 single paragraph that says in 2016 that Mr. Menefield  
16 had a firearm in 19409 Milan Avenue.

17 A. Okay, so in 2016.

18 Q. 2016.

19 A. This is -- okay for the fourth time it does not  
20 say that he has a firearm at 19409 Milan Avenue.

21 Q. Okay. And just so I'm clear the search warrant it  
22 was signed and executed in April of 2016?

23 A. Yes.

24 Q. Okay. So for at least four months, April, there's  
25 four months in April, four months, there's nothing in

1 this affidavit for the four months showing video or  
2 firearms at 19409 Milan Avenue.

3 A. No.

4 MR. PATITUCE: Thank you. No further  
5 questions.

6 THE COURT: We're going to take a  
7 short ten-minute break. Let's talk a little bit  
8 about scheduling and then we'll take a break.

9 How many witnesses do you have,  
10 Mr. Kirkland?

11 MR. KIRKLAND: One more.

12 THE COURT: One more. And do you  
13 anticipate his direct to be similar to --

14 MR. KIRKLAND: No, I think it's going  
15 to be very brief, your Honor.

16 THE COURT: Very brief?

17 MR. PATITUCE: I agree.

18 Are you going to redirect?

19 MR. KIRKLAND: Maybe a little bit.

20 THE COURT: Take a ten-minute break  
21 and we'll continue on.

22 - - - - -

23 (Thereupon, a recess was taken.)

24 - - - - -

25 THE COURT: We're back on the record.

1 All right. We're back on the detective. Is it  
2 Johnson or Johnston?

3 THE WITNESS: Johnson.

4 THE COURT: Is back on the  
5 stand. And we'll continue the cross-examination.

6 MR. PATITUCE: Actually, your Honor,  
7 I believe I concluded cross-examination; however  
8 the prosecution and I had discussed the matter  
9 outside of -- at the break and we had a  
10 stipulation that the Cuyahoga County Clerk of  
11 Courts in Case Numbers 568451 and 58808 -- 008,  
12 excuse me, 605515 for Michael Menefield for years  
13 2012, 2014 and 2016, has listed the address of  
14 19321 Milan Drive in Maple Heights. And that was  
15 going to be a stipulation that that's the record  
16 contained by the Cuyahoga County Clerk of Courts.

17 THE COURT: State in agreement to  
18 that proposed stipulation?

19 MR. KIRKLAND: That's accurate.

20 THE COURT: That's accepted for the  
21 record. Go ahead.

22 MR. PATITUCE: Thank you. And as I  
23 said, I concluded my cross.

24 THE COURT: Thank you. Redirect.

25 REDIRECT EXAMINATION OF ALFRED JOHNSON

1 BY MR. KIRKLAND:

2 Q. Detective, as set forth in your affidavit, State's  
3 Exhibit 1, the defense went through a number of  
4 paragraphs in here and took them individually shall we  
5 say and went through them and indicated that they did  
6 not indicate specifically that whether Michael  
7 Menefield had weapons at the 19409 Milan Drive.

8 Now, taking the affidavit as a whole, okay,  
9 without trying to say one particular paragraph  
10 indicates something, taking it as a whole was it your  
11 belief when you drafted this that he resided at 19409  
12 Milan Avenue?

13 A. Yes.

14 Q. And was it your belief based upon all the  
15 paragraphs and I'll summarize this a little more, that  
16 going back to 2014 this largely relates to paragraphs  
17 three through ten, that Daryl Patton was a member of  
18 the Heartless Felons and had automatic weapons and  
19 other weapons, correct?

20 A. Yes.

21 Q. And that on August 1st of 2014 he was arrested  
22 along with Michael Menefield with weapons in a vehicle;  
23 is that correct?

24 A. He was actually not arrested but he was in the  
25 vehicle.

1 Q. Michael Menefield was with him and he was  
2 arrested, is that accurate?

3 A. Yes.

4 Q. And that led to the conviction for the improper  
5 handling of firearms in a motor vehicle of Michael  
6 Menefield.

7 A. Correct.

8 Q. And that thereafter when he got out in September  
9 of 2015, he was associated with Marvin Linder?

10 A. Correct.

11 Q. And that when you did a search warrant in November  
12 of 2015, you recovered an AK-47 which was fully  
13 automatic along with other weapons?

14 A. Yes.

15 Q. And that your information was that Michael  
16 Menefield was involved in obtaining or giving  
17 Mr. Linder again a Heartless Felons member that AK-47;  
18 is that correct?

19 A. Yes.

20 Q. And so up until that point you have a history  
21 again taken in total of the circumstances not  
22 individual paragraphs that Mr. Patton was a member of  
23 the Heartless Felons and Mr. Michael Menefield was  
24 associated with them, correct?

25 A. Yes.

1 Q. And that he was involved with weapons and in fact  
2 Michael Menefield went to prison for improper handling  
3 of a firearm?

4 A. Correct.

5 Q. And when he got out he was associated with  
6 Mr. Linder another Heartless Felons investigation of  
7 yours again involving weapons; is that correct?

8 A. Yes.

9 Q. And that was November of 2015. Moving forward is  
10 when you had the Instagram videos with him with guns in  
11 April of 2016, correct?

12 A. Yes.

13 Q. And actually in November not only Marvin Linder  
14 was in the house but Daryl Patton was also in the  
15 house, again from the previous investigations?

16 A. Yes.

17 Q. Again more Heartless Felons. And then your  
18 information was that when he was released in September  
19 of 2015, he utilized the 19409 Milan Drive address?

20 A. Yes.

21 Q. Correct. So taking in the totality of  
22 circumstances when you went to get this search warrant  
23 with this affidavit it was your belief that there was  
24 probable cause to believe there were weapons and other  
25 Heartless Felons evidence connected with Michael

1 Menefield and he was connected to 19409 Milan Avenue,  
2 correct?

3 A. Yes.

4 Q. In your -- we just talked about briefly about  
5 prior investigations or prior cases with Michael  
6 Menefield, one in 2012 and I believe the other one was  
7 2014, is that correct, counsel, where he utilized the  
8 address of 19409 Milan Avenue; is that correct?

9 A. Yes.

10 Q. There was also reference to this particular case  
11 where the Clerk of Courts has him at a different  
12 address at the same address on Milan Avenue but at the  
13 time you obtained the search warrant, not afterwards  
14 but at the time you obtained the search warrant, the  
15 facts you had in your possession you believe he was at  
16 19409 Milan Drive?

17 A. Yes.

18 Q. It was not until after the raid that you had  
19 determined that he had he left and that what set forth  
20 on the -- I believe counsel called it CIF and also the  
21 Clerk of Courts provided that 19321 address; is that  
22 correct, officer?

23 A. Yes.

24 Q. Now, is it unusual in your experience -- how long  
25 have you been a detective and police officer?

1 A. Police officer since 2007, detective since 2013.

2 Q. And in your experience is it unusual for  
3 individuals being investigated to use addresses other  
4 than -- more than one address?

5 A. Yes.

6 MR. KIRKLAND: No further questions,  
7 your Honor.

8 THE COURT: Recross.

9 MR. PATITUCE: Thank you.

10 I want to make sure that I understand the  
11 last question.

12 RECROSS-EXAMINATION OF ALFRED JOHNSON

13 BY MR. PATITUCE:

14 Q. Is it usual or unusual for people involved in  
15 gang-related activity to use multiple addresses?

16 A. It's common.

17 Q. It is common. Okay. So it's common -- why is it  
18 common?

19 A. Because usually they're conducting or being  
20 involved -- if I'm looking at them they're involved in  
21 illegal activity so they're trying to not show us where  
22 they're going to be living at.

23 Q. So the purpose of using multiple addresses is to  
24 draw your attention away from where they really are.

25 A. Correct.

1 Q.. And it's your testimony and you said this in the  
2 search warrant that he outwardly listed his address as  
3 being 19490 Milan Drive.

4 A. Yes.

5 Q. Following your logic about his address at 19409  
6 Milan Avenue, isn't it likely that he was storing these  
7 weapons at another location?

8 A. That's not following my logic, that's following  
9 your logic, sir.

10 Q. So he publicly listed -- according to you he  
11 publicly listed his address as 19409 Milan Avenue.

12 A. Yes.

13 Q. Okay. The AK-47 that we saw in 2015 in October of  
14 2015 that was recovered by you in November -- excuse  
15 me, November 22, 2015, right?

16 A. I'm sorry. What was that again?

17 Q. Your testimony is you saw Michael Menefield firing  
18 an AK-47 on his Instagram account and that was dated  
19 October, excuse me, September 20, 2015; is that  
20 correct?

21 A. Yes.

22 Q. And September 20, 2015, and this is in paragraph  
23 16, you said it was seized.

24 A. Yes.

25 Q. So the AK-47 was removed from the picture in 2015?

1 A. Yes.

2 Q. So you further testified that after that the  
3 affidavit only has two more Instagram videos, one  
4 involving him driving a car and the other again of him  
5 shooting at a gun range, correct?

6 A. That's a very limited -- no, it involves him  
7 driving a car, handling firearms and having guns and  
8 him taking those same guns to a gun range showing the  
9 operability.

10 Q. That's the same day?

11 A. Yes.

12 Q. So the guns in the car and the guns at the gun  
13 range are both on that April 9, 2016?

14 A. Yes.

15 Q. So in January of 2016 -- from January 1, 2016  
16 through April 9th of 2016, there is only one day in the  
17 search warrant where you observe Michael Menefield in  
18 possession of firearms.

19 A. In the search warrant, yes.

20 Q. No other evidence in the search warrant from  
21 January 1st 2016 through April 9th 2016 that Michael  
22 Menefield had actual firearms in his possession in the  
23 search warrant.

24 A. No.

25 Q. Okay. Now, we can back that up. The last date I

1 believe the search warrant -- again please correct me  
2 if I'm wrong, the last date that you have in your  
3 search warrant where Michael Menefield was observed  
4 having firearms aside from the April 9th date is  
5 October 22, 2015. And I believe that's paragraph 13.

6 MR. KIRKLAND: Your Honor, we've gone  
7 through all this on the first time on  
8 cross-examination. I don't think we have to go  
9 through it again.

10 THE COURT: I'll overrule it. Go  
11 ahead.

12 A. So, October -- October 22nd there was posted a  
13 video of Michael Menefield showing him firing a weapon,  
14 an AK-47.

15 Q. So October 22 there's a video showing him firing  
16 an AK-47. Where was he firing the AK-47? Was it in  
17 the street, firing range?

18 A. He was at a firing range.

19 Q. So this isn't Michael Menefield with a AK-47  
20 inside a house?

21 A. No.

22 Q. Then again paragraph 16 and paragraph 17 involves  
23 him with guns neither in a vehicle or guns at a firearm  
24 range.

25 A. Yes.

1 Q. There is no paragraph inside the face or four  
2 corners of the search warrant that indicate he took a  
3 photograph or some Instagram account of him with the  
4 guns inside a house?

5 A. No.

6 Q. Okay. Now, you testified that the totality of the  
7 circumstances is what leads you to believe that you had  
8 probable cause and it seems to me that it's important  
9 that he listed or allegedly listed his address at  
10 19409.

11 A. Yes.

12 Q. Now you've heard the stipulation between the  
13 parties that over the three year period he has listed  
14 addresses with the county or the county has his address  
15 as being 19321 Milan Drive?

16 A. Yes.

17 Q. Did you ever research that that he possibly was  
18 living at 19321 Milan Drive?

19 A. Yes.

20 Q. What steps did you take to research that?

21 A. Again when I spoke to the confidential informant  
22 he actually pointed out which house that he's actually  
23 living in. Because I stated before in my testimony  
24 there were several houses on Milan Drive associated  
25 with Michael Menefield and his family. So we had to

1 decide which house was actually his.

2 Q. And that information you just testified to that is  
3 not contained within the search warrant.

4 A. Correct.

5 Q. Okay. That's actually not contained within any  
6 police report, is it?

7 A. There's video of it but it's not -- it wasn't  
8 germane to this -- this was for Michael Menefield. We  
9 weren't charging Mr. Carr with anything from Cleveland  
10 so we --

11 MR. PATITUCE: Can we approach?

12 MR. KIRKLAND: Yeah.

13 MR. PATITUCE: Your Honor, can we  
14 approach?

15 THE COURT: Yes.

16 - - - - -

17 (Thereupon, a discussion was  
18 had between Court and counsel at  
19 sidebar.)

20 - - - - -

21 THE COURT: Continue.

22 MR. PATITUCE: Thank you, your Honor.

23 BY MR. PATITUCE:

24 Q. Sorry. I was just collecting my train of thought.  
25 19321 Milan Drive is not mentioned at all in the search

1 warrant or search warrant affidavit, correct?

2 A. Correct.

3 Q. None of the other addresses that you just  
4 referenced, you mentioned that this family has other  
5 addresses on the street and none of those addresses are  
6 referenced in this search warrant.

7 A. Correct.

8 Q. Did you ever inform Judge Astrab that there were  
9 other addresses on the very same street that were  
10 associated with Michael Menefield?

11 A. Judge Astrab only had what was in the search  
12 warrant and when he looks at the search warrant he  
13 reads each individual paragraph at a time and he  
14 marked -- I don't know if he marks it in his head but  
15 he reads each individual paragraph and goes from the  
16 beginning through the end even correcting mistakes that  
17 we may have missed in spelling.

18 Q. Okay. So the answer was no, that those addresses  
19 weren't presented to Judge Astrab.

20 A. No.

21 MR. PATITUCE: Thank you. No further  
22 questions.

23 MR. KIRKLAND: Nothing further, your  
24 Honor.

25 THE COURT: I have a

1 question. Detective, I'm sure you've mentioned it  
2 but I just want to clarify it for my  
3 understanding.

4 When was the last time period that you  
5 understood Michael Menefield was living at or you  
6 believe weapons were stored at 19409 -- the  
7 address we've been focusing on as a result of this  
8 search warrant?

9 THE WITNESS: This had to be  
10 approximately January of 2016.

11 THE COURT: And what was based on  
12 the -- what fact occurred in January of 2016 that  
13 led you to believe that Michael Menefield was  
14 connected to that address?

15 THE WITNESS: We ran the D Fax report.

16 THE COURT: The what report?

17 THE WITNESS: It's a D Fax. It's a  
18 report which lists everything that's associated  
19 with a male's name. It goes into bills, mail --

20 THE COURT: So is it fair to say that  
21 it's a database that you have access to that  
22 enables you to make connections between a person  
23 of interest and another where they might be  
24 residing or located?

25 THE WITNESS: Yes.

1 THE COURT: And what was the results  
2 of that report concerning Michael Menefield?

14 THE WITNESS: Actually you know what I  
15 think we did it again in April of 2016.

16 THE COURT: And did you get the same  
17 result?

18 THE WITNESS: Yes. Before the search  
19 warrant was written.

20 THE COURT: And do you have  
21 documentation as to the results of that report?

22 THE WITNESS: Yes. I provided them to  
23 the prosecutor.

24 THE COURT: And has that been  
25 submitted in discovery?

1 MR. KIRKLAND: I should have it, your  
2 Honor.

5 And based on these two records, one in  
6 January and one in April, did you use that address  
7 for purposes of preparing your search warrant?

8 THE WITNESS: Yes.

15 THE WITNESS: There were other  
16 addresses on Milan that was connected -- that were  
17 connected, but that again was the latest one we  
18 had, and based on this confidential informant  
19 information also that he lived there, that that  
20 was the house that he lived in.

1 as to when he believed Michael Menefield was  
2 living there or connected there by way of weapons  
3 or otherwise?

4 THE WITNESS: I believe the latest  
5 date would have been either December of 2015 or  
6 January of 2016.

7 THE COURT: Thank you.

8 Any follow-up by the State on those  
9 questions?

10 MR. KIRKLAND: None, your Honor.

11 THE COURT: Any follow-up by the  
12 defense regarding those questions?

13 MR. PATITUCE: Can I have just one  
14 moment, your Honor? I apologize.

15 THE COURT: Sure.

16 FURTHER RECROSS-EXAMINATION OF ALFRED JOHNSON  
17 BY MR. PATITUCE:

18 Q. Detective, I just want to make sure I understood  
19 correctly. You said last time you had evidence that  
20 guns may have been at 19409 Milan Drive was January  
21 2016?

22 A. No, I didn't say that.

23 Q. What did you say?

24 A. He asked me where did we get the address from. Is  
25 that what we're speaking of, what your Honor asked?

1 Q. No. You made a comment relating to when is the  
2 last time you had a video of a firearm in 19409 Milan  
3 Drive. When is the last one? I'll just ask it that  
4 way.

5 A. And I said I didn't have -- I did not have  
6 Milan -- I mean, I'm sorry, Michael Menefield in 19409  
7 Milan with a weapon.

8 Q. So you did not have a photograph of Michael  
9 Menefield in 19409 Milan Avenue with a weapon. That's  
10 what you just said.

11 A. Yes.

12 MR. PATITUCE: No further questions.

13 THE COURT: I'm sorry. You said you  
14 did not have a photo?

15 THE WITNESS: Right. I did not.

16 MR. PATITUCE: Thank you, your Honor.

17 THE COURT: Did you have any  
18 photographic information either videotape or still  
19 photos that you believed placed him at that  
20 address?

21 THE WITNESS: Yes. It was on the  
22 Instagram account in the bedroom. But again only  
23 way I could verify that was once we went inside  
24 the house.

25 THE COURT: And when did you have

1 that Instagram depiction of that bedroom?

2 THE WITNESS: This was sometime in  
3 2015 I believe but I'm not sure exactly when.

4 THE COURT: And did that Instagram  
5 photograph play any role in your decision or your  
6 belief that Michael Menefield was associated with  
7 this address at 19409?

8 THE WITNESS: Yes.

9 THE COURT: But was that in  
10 connection with all the other information that you  
11 mentioned with regard to the D Fax report?

12 THE WITNESS: Yes.

13 THE COURT: Any follow-up by either  
14 side? State?

15 MR. KIRKLAND: Nothing by the State,  
16 your Honor.

17 THE COURT: Defense?

18 MR. PATITUCE: Just one question.

19 FURTHER CROSS-EXAMINATION OF ALFRED JOHNSON  
20 BY MR. PATITUCE:

21 Q. This testimony or statement regarding a photograph  
22 of a bedroom inside 19409 Milan Avenue, that's not in  
23 the search warrant at all, is it?

24 A. No.

25 MR. PATITUCE: Thank you. No further

1                   questions.

2                   THE COURT:     If nothing else of the  
3                   detective, you're released. Watch your step.  
4                   There are two steps down.

5                   THE WITNESS:    Thank you, your Honor.

6                   THE COURT:     Call your next witness.

7                   MR. KIRKLAND:    Your Honor, the State  
8                   will call Detective Tom Halley from Maple Heights  
9                   Police Department.

10                  - - - - -

11                  The STATE OF OHIO, to maintain the issues on  
12                  its part to be maintained, called as a witness,  
13                  TOM HALLEY, who, being first duly sworn, was  
14                  examined and testified as follows:

15                  THE COURT:     State your name for the  
16                  record.

17                  THE WITNESS:    Tom Halley. H-A-L-L-E-Y.

18                  DIRECT EXAMINATION OF TOM HALLEY

19                  BY MR. KIRKLAND:

20                  Q.     I believe he's already spelled his name for the  
21                  record.

22                  So, sir, where are you employed?

23                  A.     Maple Heights Police Department.

24                  Q.     And what's your current capacity or job there?

25                  A.     Detective.

1 Q. How long have you been a detective?  
2 A. Since February of this year.  
3 Q. And how long have you been employed by the Maple  
4 Heights Police Department?

5 A. 14 and a half years, almost 15.

6 Q. And I want to draw your attention to the events of  
7 April 15th of this year.

8 Were you involved at all in the execution of a  
9 search warrant at 19409 Milan Avenue in the City of  
10 Maple Heights?

11 A. Yes.

12 Q. And could you briefly explain how you and your  
13 department became involved in that matter?

14 A. The Cleveland Gang Unit asked our command staff if  
15 they would -- we would assist them in executing a  
16 search warrant in the city, also asked for the use of  
17 Southeast Area Law Enforcement SWAT team. It was  
18 approved and on the day in question we met at the  
19 station, were briefed in the basement, and then  
20 proceeded over to the house.

21 Q. Sir, are you familiar with Michael Menefield?

22 A. Yes.

23 Q. Were you familiar with him before this event?

24 A. I think from as a juvenile years ago in patrol.

25 Q. In connection with this particular event, were you

1 advised what was being sought or searched for?

2 A. No, I wasn't.

3 Q. Did your department conduct any actual  
4 investigation?

5 A. No.

6 Q. Okay. What was the role of your department and  
7 SEALE to the best of your knowledge in this  
8 investigation?

9 A. The SWAT team was to execute getting into the  
10 house and then Cleveland gang unit was going to take  
11 over the search and we were, as detectives, just to  
12 basically assist on the perimeter, block traffic, you  
13 know, provide any assistance we can.

14 Q. Would it be accurate to say your department  
15 conducted no investigation into this matter prior to  
16 this date?

17 A. No.

18 Q. And did you rely on the search warrant that was  
19 obtained to execute at 19409 Milan Avenue?

20 A. Yes.

21 Q. But that was not obtained by your department, it  
22 was obtained by --

23 A. By Cleveland Gang Unit.

24 Q. And other than your assistance on that day, your  
25 officers and the officers of SEALE had no active

1 investigation into this matter?

2 A. No.

3 MR. KIRKLAND: Thank you. No further  
4 questions.

5 MR. PATITUCE: Thank you, your Honor.

6 CROSS-EXAMINATION OF TOM HALLEY

7 BY MR. PATITUCE:

8 Q. Detective, it's my understanding that on the date  
9 that the search warrant was executed you took up a  
10 position on Milan Avenue.

11 A. Yes.

12 Q. What position did you take up?

13 A. I was on Milan approximately three to four houses  
14 down in front of the previous address where the Carrs  
15 used to live in case --

16 Q. They use to live there?

17 A. There was a concern throughout SEALE -- I don't  
18 mean necessarily --

19 Q. You were worried there was a possibility that he  
20 might be in 19321 Milan?

21 A. Yeah, because they're two houses next to each  
22 other that the family used to live in.

23 Q. Sure. In fact Mr. Derrick Carr used to own --  
24 prior to the housing bubble collapse -- used to own  
25 multiple house on that street.

1 A. I just know of just two.

2 Q. And two houses were known to the police at the  
3 time that the search warrant was executed?

4 A. Correct.

5 Q. When you say SEALE executed the search warrant,  
6 did the officers or did anyone actually read the search  
7 warrant?

8 A. I did not. The only other person that was there  
9 from my department in the capacity of like a detective  
10 was Captain Hanson.

11 Q. And Captain Hanson was the individual or officer  
12 wearing the GoPro kind of like a body cam?

13 A. Correct.

14 Q. So as far as you're concerned you did not observe  
15 or read the search warrant to see if it was accurate?

16 A. I did not.

17 Q. You agree with me that before you execute a search  
18 warrant you have a duty legally to review the search  
19 warrant, make sure it's --

20 A. I was just asked to come provide support.

21 Q. Right. I understand. I'm not asking in this  
22 particular case, but you also agree with me that police  
23 officers are -- just because a judge signs a warrant  
24 doesn't mean it's a good warrant, you have to review it  
25 yourself.

1 A. Correct.

2 Q. That's a legal obligation. Did you go through  
3 OPOTA?

4 A. Yes.

5 Q. So an officer can't say there was a search warrant  
6 and the Judge signed it, right? That's not a defense.

7 A. Correct.

8 Q. Okay. And the search warrant in this case was  
9 prepared by Detective Johnson?

10 A. Correct.

11 Q. And you were in front of 19321 Milan Drive because  
12 it was your impression at the time that Michael  
13 Menefield might be residing at that location?

14 A. Yes. I don't remember the exact address. I just  
15 know a couple houses to the west.

16 Q. So to rephrase that, it's fair to say that there's  
17 a couple houses to the west that it was possible that  
18 Michael Menefield was in?

19 A. Yeah. Or any family member.

20 Q. And this was conveyed to you by the Cleveland Gang  
21 Unit?

22 A. No. I just knew this from my experience in  
23 patrol. I'd been there before and talked to them.

24 Q. Sure. Other officers were aware of this at the  
25 time, that's why you were at that location.

1 A. The house in question or those two houses?

2 Q. The house in question that you were --

3 A. I was the only one in front of those.

4 Q. And that was because --

5 A. Just because the family used to live there.

6 Q. And this was known to the team that was briefing?

7 A. That I have no idea.

8 Q. We'd have to ask them?

9 A. Yes.

10 Q. Where was Detective Johnson when this was

11 happening?

12 A. To be honest with you, I have no idea.

13 MR. PATITUCE: Thank you. No further

14 questions.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION OF TOM HALLEY

17 BY MR. KIRKLAND:

18 Q. Your experience I believe you indicated is when he

19 was a juvenile; is that correct?

20 A. I think so.

21 MR. KIRKLAND: No further questions.

22 THE COURT: Detective, at the time

23 you were executing the warrant, did you have any

24 present knowledge or memory as to where Michael

25 Menefield was living on Milan Avenue?

1                   THE WITNESS:    Other than in the quick  
2                   briefing in the basement given by one of the SWAT  
3                   members on who the person that they were looking  
4                   for.

5                   THE COURT:     And that briefing  
6                   indicated that the house that they were going to  
7                   search, that number 19409.

8                   THE WITNESS:    Correct.

9                   THE COURT:     When that was mentioned,  
10                  at the briefing, did you have any direct knowledge  
11                  that Michael Menefield was associated with that  
12                  address?

13                  THE WITNESS:    Other than there was a  
14                  possibility that he may be at that house.

15                  THE COURT:     Was that based on your own  
16                  knowledge and experience of knowing him somewhat  
17                  as you described or did that come from what the  
18                  SEALE team mentioned to you?

19                  THE WITNESS:    From what the team had  
20                  mentioned.

21                  THE COURT:     So you didn't have any  
22                  independent knowledge that he may be at that  
23                  location?

24                  THE WITNESS:    No.

25                  THE COURT:     Any follow-up on by either

1 party?

2 MR. KIRKLAND: Nothing.

3 MR. PATITUCE: Yes, your Honor.

4 RECROSS-EXAMINATION OF TOM HALLEY

5 BY MR. PATITUCE:

6 Q. You are a Maple Heights detective.

7 A. Correct.

8 Q. So that's your city and you investigate crimes  
9 that happen there?

10 A. Yes.

11 Q. And at the time you had no knowledge that Michael  
12 Menefield was living in the house outside of what was  
13 said at the briefing?

14 A. No.

15 Q. And I think you said in response to the Judge's  
16 questions that during the briefing Michael Menefield  
17 was the person you were looking for?

18 A. No, that Cleveland was looking for. We weren't  
19 looking for.

20 Q. I apologize. The person Cleveland was looking for  
21 was Michael Menefield. That's the whole point of this  
22 was looking for Michael Menefield?

23 A. Yeah, that's one of the things they had mentioned  
24 in the briefing to us.

25 MR. PATITUCE: Thank you. No further

1                   questions.

2                   THE COURT:     Follow-up?

3                   MR. KIRKLAND:   Nothing.

4                   THE COURT:     Thank you, detective. And  
5                   that concludes your testimony. Watch your step.  
6                   There are two steps down.

7                   Any further information that needs to be  
8                   presented by either side?

9                   MR. KIRKLAND:   Nothing on behalf of  
10                  the State, your Honor. Only issue would be the --

11                  MR. PATITUCE:   The only remaining  
12                  issue would be whether or not the Court feels  
13                  Judge Astrab's testimony is necessary for the  
14                  second prong.

15                  THE COURT:     First, I'd like to get  
16                  the exhibits that were mentioned in this  
17                  hearing. So I can have that.

18                  And one is the --

19                  MR. KIRKLAND:   Search warrant.

20                  THE COURT:     And we have Defendant's  
21                  Exhibits A and B. Any objections by either side  
22                  to any of these documents?

23                  MR. KIRKLAND:   Nothing --

24                  MR. PATITUCE:   No.

25                  MR. KIRKLAND:   -- on behalf of the

1 State.

2 THE COURT: They will be accepted into  
3 evidence.

4 Now, Mr. Patituce, you mentioned with  
5 regard to Judge Astrab something on Facebook that  
6 you had copied or some sort of public document.

7 MR. PATITUCE: Well, I did not --

8 THE COURT: You referenced that I  
9 believe and you read a portion of that.

10 MR. PATITUCE: Yes, your Honor. I  
11 could mark that and submit it to the Court if the  
12 Court likes.

13 THE COURT: I would like that,  
14 please.

15 MR. KIRKLAND: I don't know if it's  
16 been adequately authenticated, your Honor.

17 THE COURT: Well, I understand that  
18 I'm not accepting it into evidence, but I do want  
19 to at least understand what that document is.

20 And, Ms. Griffin -- I'm sorry,  
21 Ms. Graham, you certainly should be looking at it  
22 as well.

23 MS. GRAHAM: Do you have another  
24 copy?

25 MR. PATITUCE: No, that's my only

1 copy I have. Electronically I have it stored  
2 but -- I should -- actually I lied. Here.

3 THE COURT: And while Ms. Graham is  
4 looking at it and Mr. Kirkland is looking at it,  
5 Mr. Patituce, why don't you describe for the  
6 record what these two documents are so at least  
7 we'll all know what they are.

8 MR. PATITUCE: Just to be clear for  
9 the record, your Honor, one is a color copy, the  
10 other is a black and white, they're just printed  
11 off.

12 THE COURT: Same document?

13 MR. PATITUCE: Same document printed  
14 off in different orientations I guess.

15 THE COURT: What is that?

16 MR. PATITUCE: It is a Facebook  
17 posting by Judge Astrab on September 2015. He's  
18 sharing a picture in thanks to the people.

19 THE COURT: What's the date of that?

20 MR. PATITUCE: September 22, 2015.

21 And just for purposes of the record I  
22 know the Court is not taking it as evidence, but I  
23 did mark it as Defendant's Exhibit C so it can  
24 be --

25 THE COURT: And this is Judge

1 Astrab's --

2 MR. PATITUCE: Mike Astrab.

3 THE COURT: -- Judge Astrab's  
4 Facebook.

5 MR. PATITUCE: Yes, your Honor. This  
6 is a posting authenticated by him.

7 MR. KIRKLAND: Supposedly. Again I'm  
8 objecting on the authentication basis.

9 MR. PATITUCE: It says, It's been a  
10 tough few months with stress from cases, death  
11 threats and the usual political rigamarole that  
12 always rolls around.

13 I wanted to take a moment to thank  
14 everyone who has put up with me and stuck by my  
15 side. It means a lot that folks believe in me and  
16 what I'm trying to get accomplished. I'd tag  
17 people but it would be just too long. Just know  
18 I'm appreciative.

19 And then there's that stock paragraph  
20 expressing --

21 MS. GRAHAM: I would say reading that  
22 alone I don't see how on Earth you can possibly  
23 show any type of a bias by Judge Astrab that it  
24 could be a basis of requiring him to testify in  
25 this case.

1                   THE COURT:     Do you have any other  
2 documents from Judge Astrab like this or others?

3                   MR. PATITUCE:   I do have others but  
4 none that, I mean, talks about the significant  
5 sentences that he gave out and how he's adopted  
6 certain policies, but I believe that his reference  
7 in here about the two death threats months later  
8 manifest that it's been with him and it was with  
9 him through the time that he was in his capacity  
10 actually referencing --

11                  THE COURT:     The search warrant was  
12 presented to him somewhere in what? End of April?

13                  MR. KIRKLAND:   August 12th, your  
14 Honor. April 12th, your Honor.

15                  THE COURT:     April 12th, 2016?

16                  MR. KIRKLAND:   Yes, your Honor.

17                  MS. GRAHAM:    So a post thanking his,  
18 I guess, Facebook friends or whoever this is  
19 supposed to be through supporting him for stress  
20 is supposed to be evidence of bias against gang  
21 members in a particular case? I don't see how it  
22 could be possibly.

23                  MR. PATITUCE:   We'll go through  
24 stress to death threats months after the alleged  
25 threat he's referencing the death threats that's

1 not saying I've had stress --

2 MS. GRAHAM: But it didn't say  
3 anything particular about gangs or his bias  
4 against gangs or anything showing he is carrying a  
5 bias. Having stress about things does not mean  
6 you're biased against someone.

7 MR. PATITUCE: Are you arguing to me  
8 or to the Judge?

9 THE COURT: That's approximately  
10 seven months prior to presentation of the search  
11 warrant.

12 Do you have any other documents by Judge  
13 Astrab?

14 MR. PATITUCE: Not at the present,  
15 your Honor.

16 THE COURT: Now, unless I missed it  
17 then at this hour given we've had kind of a long  
18 day, all of us have, I may have missed it but to  
19 confirm did you inquire of Detective Johnson  
20 anything about Judge Astrab executing or reviewing  
21 the search warrant?

22 MR. PATITUCE: I did, your Honor.

23 MR. KIRKLAND: I believe, yes, he did  
24 discuss that, your Honor.

25 THE COURT: And remind me what the

1 detective said about that.

2 MR. PATITUCE: Certainly, your Honor,  
3 if you want.

4 MR. KIRKLAND: My recollection is  
5 that he just said Judge Astrab went through it  
6 paragraph by paragraph and then at the conclusion  
7 of it just signed the affidavit. There was no  
8 indication --

9 THE COURT: I remember that testimony  
10 but was that in response to a specific question --

11 MR. KIRKLAND: I believe it was.

12 THE COURT: -- by you?

13 MR. PATITUCE: There was a question,  
14 your Honor. I also was inquiring of the detective  
15 as to his knowledge of what happened to Judge  
16 Astrab in the William Hammonds case.

17 And, your Honor, I want to point out too  
18 that I know while the prosecutor says this is kind  
19 of ridiculous or a stretch, the Cuyahoga County  
20 bench, all the other 33 judges, you all recused  
21 yourself because Judge Astrab was the victim.

22 Every single judge in this county recused  
23 themselves from hearing the Hammonds case and the  
24 Supreme Court ended up assigning Judge Dale  
25 Crawford to hear it because while none of you may

1           actually be biased or hold it against a criminal  
2           defendant, and I would never -- actually I would  
3           never argue I have any reason to think, for  
4           instance you, your Honor, would do that, but the  
5           mere appearance of impropriety caused 33 judges to  
6           step away from the Hammonds case and to say to be  
7           detached and neutral a judge that isn't of our  
8           bench needs to hear, then I believe a judge who is  
9           a defendant and a citizen, or in a case of a  
10           permanent resident who is a defendant should have  
11           same privy.

12           And I don't mean to be disrespectful of a  
13           bench if a judge can sit and judge another person  
14           should sit in the same eyes of the law and if 33  
15           judges in Cuyahoga County are going to recuse  
16           themselves from a case in which a colleague is a  
17           victim, then Judge Astrab should have recused  
18           himself from a case in which he had already been  
19           victimized by the same group

20           MS. GRAHAM:     In response to that, your  
21           Honor, if that were the case, the Cuyahoga County  
22           Common Pleas Court could never hear a case  
23           involving the Heartless Felons ever under his  
24           theory. That isn't the case that you can no  
25           longer be impartial just because of a prior

1 case. So --

2 THE COURT: I didn't hear him say  
3 quite that.

4 MS. GRAHAM: Following that logic  
5 though that's what he's basically insinuating  
6 because this case may involve Heartless Felons and  
7 there cannot be inferences in this case and  
8 there's nothing to support that.

9 THE COURT: I take her point and  
10 maybe I'll just try to rephrase it.

11 Are you suggesting that because I along  
12 with the other 33 judges recused ourselves when  
13 Judge Astrab was considered a victim, and  
14 subsequently a judge outside of our jurisdiction  
15 or our county was appointed to hear that case by  
16 the Supreme Court, because I did that, along with  
17 the rest of the bench, I should not be hearing  
18 this case because it has reference to Heartless  
19 Felons in it?

20 MR. PATITUCE: No, that is not the  
21 point that I'm making, your Honor.

22 The point that I'm making is that when  
23 Judge Astrab was singularly the victim of the  
24 case, the bench recused themselves because Judge  
25 Astrab was the victim.

1                   Judge Astrab is the judge who the warrant  
2 was taken to in this case. The warrant was taken  
3 to Judge Astrab who was the victim and who will  
4 remain the victim for the rest of his life.

5                   What was done to him was inappropriate,  
6 it was criminal, it was outrageous to threaten the  
7 child of any parent. That's absolutely outrageous  
8 conduct. So Judge Astrab should recuse himself  
9 from cases involving the Heartless Felons. That  
10 doesn't go to the rest of the bench because the  
11 connection -- the slight difference is Judge  
12 Astrab was the victim. He's the Judge so the  
13 bench recused themselves.

14                  Judge Astrab was the victim of the  
15 Heartless Felons so that that's singular to him.  
16 The rest of the bench wasn't the victim. So Judge  
17 Astrab should be recusing himself from Heartless  
18 Felons cases is my point.

19                  THE COURT:     I understand.

20                  MS. GRAHAM:    He was the victim of  
21 specific people who may have been members of the  
22 Heartless Felons. To generalize that towards an  
23 overarching bias against all people who may be  
24 associated with the Heartless Felons in the future  
25 just can't be imputed upon him.

1                   There's a presumption of being unbiased  
2 and impartial by judges and I'll go back to, and I  
3 don't think we got into this yet, but the  
4 testimony that was given by the detective was that  
5 defense counsel asked him what Judge Astrab had to  
6 say if he asked him about his feelings about it  
7 and he said, no, he didn't say anything to him  
8 about his feelings in particular so there's  
9 nothing, no conduct, no statement to show a bias  
10 on the part of Judge Astrab.

11                  This is all being imputed upon him based  
12 on the general assumption that there must be a  
13 bias without any factual support for it.

14                  THE COURT:     Now, Mr. Patituce, is  
15 your position that this constitutes the appearance  
16 of impropriety or actual impropriety?

17                  MR. PATITUCE:    Oh, your Honor, I  
18 would not -- in the Supreme Court framework I  
19 would not be using -- I don't want to imply that  
20 Judge Astrab was acting unethically or  
21 unprofessionally.

22                  With the term impropriety what I'm trying  
23 to say, I don't believe Judge Astrab broke the  
24 rules of ethics. I am in no way suggesting that  
25 because I know this is being taken down.

1                   But what I am suggesting under the  
2 framework of Franks is that there is objectively,  
3 just objectively there is on the very face of it  
4 from the allegation and the facts objectively  
5 speaking that he is not detached and he is not  
6 neutral.

7                   THE COURT:     Does either side need any  
8 further briefing on this based on the testimony  
9 that's come out here today and comments made by  
10 counsel advocating this motion?

11                  MS. GRAHAM:    If your Honor would  
12 like --

13                  THE COURT:     Ms. Graham, do you feel  
14 that you want to supplement anything that you've  
15 already filed based on the discussion and  
16 information?

17                  MS. GRAHAM:    Well, some of this that  
18 was brought up was not in his opposition so  
19 perhaps maybe that would be officially --

20                  THE COURT:     If you want to supplement  
21 anything that you've already filed, Mr. Patituce?

22                  MR. PATITUCE:   At this time, no.

23                  THE COURT:     All right. So file your  
24 supplemental documents. Ten days, is that  
25 adequate for you?

1 MS. GRAHAM: Yes, your Honor.

2 THE COURT: So I'll take it under  
3 advisement until then and make my decision upon  
4 receiving your documents and reviewing the entire  
5 matter.

6 Thank you very much.

7 MR. KIRKLAND: Thank you, your Honor.

8 MR. PATITUCE: Thank you, your Honor.

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10 (Thereupon, Court was adjourned.)

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